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# Executive Orders

## EXECUTIVE ORDER BJ 11-13

### Bond Allocation—Louisiana Public Facilities Authority

WHEREAS, pursuant to the Tax Reform Act of 1986 and Act 51 of the 1986 Regular Session of the Louisiana Legislature, Executive Order No. BJ 2008-47 was issued 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 (hereafter “Ceiling”);

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

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

WHEREAS, The Louisiana Public Facilities Authority has applied for an allocation of the 2011 Ceiling to be used in connection with the financing of the acquisition, construction and installation of a synthetic alternative fuel manufacturing facility, renovation of an existing building, addition of rail facilities to the site, acquisition of land, and purchase of equipment for facilities to be located in the Parish of Iberia;

NOW THEREFORE, I, BOBBY JINDAL, 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 bond issue, as described in this Section, shall be and is hereby granted an allocation from the 2011 Ceiling in the amount shown:

Amount of Allocation	Name of Issuer	Name of Project
\$10,000,000	Louisiana Public Facilities Authority	Performance Fuel Project

SECTION 2: The allocation granted herein 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’s Private Activity Bond Ceiling” submitted in connection with the bond issue described in Section 1.

SECTION 3: The allocation granted herein shall be valid and in full force and effect through December 31, 2011, provided that such bonds are delivered to the initial purchasers thereof on or before October 13, 2011.

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

SECTION 5: This Order is effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the Governor, or terminated by operation of law.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 Louisiana, at the Capitol, in the City of Baton Rouge, on this 15th day of July, 2011.

Bobby Jindal  
Governor

ATTEST BY  
THE GOVERNOR  
Tom Schedler  
Secretary of State  
1108#089

## EXECUTIVE ORDER BJ 11-14

### Bond Allocation—Calcasieu Parish Public Trust Authority

WHEREAS, pursuant to the Tax Reform Act of 1986 and Act 51 of the 1986 Regular Session of the Louisiana Legislature, Executive Order No. BJ 2008-47 was issued 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 (hereafter “Ceiling”);

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

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

WHEREAS, The Calcasieu Parish Public Trust Authority has applied for an allocation of the 2011 Ceiling to be used in connection with the financing of the Single Family Mortgage Revenue Bonds of the Issuer, or issuance of Mortgage Credit Certificates in lieu thereof to provide single family housing for the low and middle income families of the Imperial Calcasieu Parish area;

NOW THEREFORE, I, BOBBY JINDAL, 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 bond issue, as described in this Section, shall be and is hereby granted an allocation from the 2011 Ceiling in the amount shown:

Amount of Allocation	Name of Issuer	Name of Project
\$20,000,000	Calcasieu Parish Public Trust Authority	Mortgage Credit Certificate Program

SECTION 2: The allocation granted herein 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’s Private Activity Bond Ceiling” submitted in connection with the bond issue described in Section 1.

SECTION 3: The allocation granted herein shall be valid and in full force and effect through December 31, 2011, provided that such bonds are delivered to the initial purchasers thereof on or before October 13, 2011.

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

SECTION 5: 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 Louisiana, at the Capitol, in the City of Baton Rouge, on this 15th day of July, 2011.

Bobby Jindal  
Governor

ATTEST BY  
THE GOVERNOR  
Tom Schedler  
Secretary of State  
1108#090

**EXECUTIVE ORDER BJ 11-15**

Bond Allocation—Local Government Environmental Facilities and Community Development Authority

WHEREAS, pursuant to the Tax Reform Act of 1986 and Act 51 of the 1986 Regular Session of the Louisiana Legislature, Executive Order No. BJ 2008-47 was issued 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 (hereafter “Ceiling”);
- (2) the procedure for obtaining an allocation of bonds under the Ceiling; and
- (3) a system of central record keeping for such allocations; and

WHEREAS, The Louisiana Local Government Environmental Facilities and Community Development Authority has applied for an allocation of the 2011 Ceiling to be used in connection with the financing of the acquisition, construction, rehabilitation and equipping of one or more distributive sewer systems;

NOW THEREFORE, I, BOBBY JINDAL, 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 bond issue, as described in this Section, shall be and is hereby granted an allocation from the 2011 Ceiling in the amount shown:

Amount of Allocation	Name of Issuer	Name of Project
\$5,280,000	Local Government Environmental Facilities Development Authority	Density Utilities of Louisiana, LLC

SECTION 2: The allocation granted herein 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’s Private Activity Bond Ceiling” submitted in connection with the bond issue described in Section 1.

SECTION 3: The allocation granted herein shall be valid and in full force and effect through December 31, 2011, provided that such bonds are delivered to the initial purchasers thereof on or before October 24, 2011.

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

SECTION 5: 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 Louisiana, at the Capitol, in the City of Baton Rouge, on this 26th day of July, 2011.

Bobby Jindal  
Governor

ATTEST BY  
THE GOVERNOR  
Tom Schedler  
Secretary of State  
1108#091

**EXECUTIVE ORDER BJ 11-16**

Flags at Half Staff

WHEREAS, According to most recent news accounts, a U.S. Military helicopter was downed in Wardak Province, in eastern Afghanistan, by Afghan insurgents, killing thirty service members including many Navy SEALs; and

WHEREAS, those who tragically lost their lives were on a mission to rescue a team of military personnel; and

WHEREAS, these service members dedicated their lives to defending freedom for all Americans and their memory will live on in the hearts of a grateful nation, their families, friends, and fellow service members; and

WHEREAS, Among those killed, according to news accounts, were two Louisiana residents and Navy SEALs, Lieutenant Commander Jonas Kelsall and Chief Petty Officer Robert James Reeves, both of Shreveport, Louisiana;

WHEREAS, Lieutenant Commander Kelsall and Chief Petty Officer Reeves were ambitious and courageous men who loved their country and the military; and

WHEREAS, the patriotism, dedicated service, and ultimate sacrifice of these service members, including Lieutenant Commander Kelsall and Chief Petty Officer Reeves, in defense of their country and freedom of all Americans make it appropriate and fitting for the State of Louisiana to remember them and their families, to mark their passing, and to honor their memory;

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

SECTION 1: As an expression of respect for the service members who died in the tragic helicopter crash on Saturday, August 6, 2011, in Wardak Province, including Louisianians Lieutenant Commander Jonas Kelsall and Chief Petty Officer Robert James Reeves, effective immediately, the flags of the United States and the State of Louisiana shall be flown at half staff over the State Capitol and all public building and institutions of the State of Louisiana until sunset on Friday, August 12, 2011.

SECTION 2: This Order is effective upon signature and shall remain in effect until sunset, Friday, August 12, 2011, unless amended, modified, terminated, or rescinded prior to that date.

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 8th day of August, 2011.

Bobby Jindal  
Governor

ATTEST BY  
THE GOVERNOR  
Tom Schedler  
Secretary of State  
1108#092

#### EXECUTIVE ORDER BJ 11-17

Amended Executive Order BJ 2011-16—Flags at Half Staff

WHEREAS, according to recent news accounts, a U.S. Military helicopter was downed in Wardak Province, in eastern Afghanistan, by Afghan insurgents, killing thirty service members including many Navy SEALs; and

WHEREAS, those who tragically lost their lives were on a mission to rescue a team of military personnel; and

WHEREAS, these service members dedicated their lives to defending freedom for all Americans and their memory will live on in the hearts of a grateful nation, their families, friends, and fellow service members; and

WHEREAS, among those killed, according to news accounts, were two Louisiana residents and Navy SEALs,

Lieutenant Commander Jonas Kelsall and Chief Petty Officer Robert James Reeves, both of Shreveport, Louisiana;

WHEREAS, Lieutenant Commander Kelsall and Chief Petty Officer Reeves were ambitious and courageous men who loved their country and the military; and

WHEREAS, the patriotism, dedicated service, and ultimate sacrifice of these service members, including Lieutenant Commander Kelsall and Chief Petty Officer Reeves, in defense of their country and freedom of all Americans make it appropriate and fitting for the State of Louisiana to remember them and their families, to mark their passing, and to honor their memory;

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

SECTION 1: As an expression of respect for the service members who died in the tragic helicopter crash on Saturday, August 6, 2011, in Wardak Province, including Louisianians Lieutenant Commander Jonas Kelsall and Chief Petty Officer Robert James Reeves, effective immediately, the flags of the United States and the State of Louisiana shall be flown at half staff over the State Capitol and all public building and institutions of the State of Louisiana until sunset on Sunday, August 14, 2011.

SECTION 2: This Order is effective upon signature and shall remain in effect until sunset, Sunday, August 14, 2011, unless amended, modified, terminated, or rescinded prior to that date.

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 10th day of August, 2011.

Bobby Jindal  
Governor

ATTEST BY  
THE GOVERNOR  
Tom Schedler  
Secretary of State  
1108#093

# Emergency Rules

## DECLARATION OF EMERGENCY

### Department of Children and Family Services Division of Programs

#### Exempt Earned Income Tax Credit (EITC) Payments (LAC 67:III.1975)

The Department of Children and Family Services (DCFS) has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to adopt LAC 67: III, Subpart 3, Chapter 19, Section 1975. This Emergency Rule is effective upon the signature of the DCFS secretary and shall remain in effect for a period of 120 days. This declaration is necessary to extend the original Emergency Rule effective April 10, 2011 since it is effective for a maximum of 120 days and will expire on August 7, 2011 before the final Rule takes effect. (The final Rule will be published in the August 20, 2011 issue.)

Pursuant to the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (Section 728, P.L. 111-312) enacted on December 17, 2010, the agency must exclude as income and as resources for a period of 12 months from the month received, federal tax refunds received after December 31, 2009, in all federal means-tested programs. In accordance with the Food and Nutrition Services (FNS) Supplemental Nutrition Assistance Program (SNAP) policy memo dated February 07, 2011, Section 1975 of Subpart 3, Chapter 19, Subchapter I is being revised to disregard Earned Income Tax Credit (EITC) payments as a resource for a period of 12 months from the date of receipt.

Emergency action is required in this matter in order to avoid sanctions and penalties from the United States (R.S. 49:953(B)). If the agency does not follow the Federal law regarding excluding Federal tax refunds, the department may be subject to sanctions and penalties.

#### Title 67

### SOCIAL SERVICES

#### Part III. Economic Stability

#### Subpart 3. Supplemental Nutrition Assistance Program (SNAP)

#### Chapter 19. Certification and Eligible Households

#### Subchapter I. Income and Deductions

#### §1975. Earned Income Tax Credits (EITC)

A. Exclude EITC as resources for 12 months from receipt.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.9 and P.L. 103-66, P.L. 110-246, Section 728 P.L. 111-312.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Eligibility Determinations, LR 15:393 (May 1989), amended by the Department of Social Services, Office of Family Support, LR 21:188 (February 1995), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2530 (November 2010), LR 37:

Ruth Johnson  
Secretary

1108#003

## DECLARATION OF EMERGENCY

### Department of Economic Development Office of the Secretary

#### Angel Investor Tax Credit Program (LAC 13:I.Chapter 33)

The Department of Economic Development, Office of the Secretary, pursuant to the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) hereby amends the following rules of the Angel Investor Tax Credit Program, in order to revise LAC 13, Part I, Chapter 33. This Emergency Rule shall become effective upon promulgation and shall remain in effect for the maximum period allowed under the Administrative Procedure Act, or until a final rule is promulgated in accordance with law, whichever occurs first.

The Department of Economic Development, Office of the Secretary, has found an immediate need to amend the rules for the Angel Investor Tax Credit Program pursuant to R.S. 47:6020 in light of the passage of Act 414 of the 2011 Regular Session of the Louisiana Legislature. The State needs to provide for the growth and stability of Louisiana's entrepreneurial business environment by making available ready sources of capital necessary to support this environment. This program is intended to provide economic benefits to Louisiana-based investors who will make new investments or increase their existing investment in Louisiana-based economic development projects that will create and/or retain jobs for Louisiana citizens; and to enhance the entrepreneurial business environment and raise ready sources of capital for this environment through encouraging third parties to invest in early stage wealth-creating businesses expanding the economy of the state, enlarging the quality of jobs available in Louisiana. Without these Emergency Rules the public welfare may be harmed as the result of the failure to enhance the growth and stability of Louisiana's entrepreneurial business environment by making available ready sources of capital necessary to support this environment, and the loss of business investment and economic development projects creating or retaining jobs that would improve the standard of living and enrich the quality of life for citizens of this state.

#### Title 13

### ECONOMIC DEVELOPMENT

#### Part I. Financial Incentive Programs

#### Chapter 33. Angel Investor Tax Credit

#### §3301. General

A. The intent of the Angel Investor Tax Credit Program Act of 2011 (Act 414 of 2011; R.S. 47:6020, the provisions of which shall hereinafter be referred to as "Act 414") is to enhance the entrepreneurial business environment and raise ready sources of capital for this environment through encouraging third parties to invest in early stage wealth-

creating businesses expanding the economy of the state, enlarging the quality jobs available in Louisiana to retain the presence of young people in Louisiana. These provisions are to be read in pari materiae with Act 414. For the purposes of this Chapter, the "department" shall be Louisiana Economic Development.

B. Act 414 repealed the Angel Investor Tax Credit Program Act of 2005 and replaced it with the reenacted provisions of R.S. 47:6020. Therefore, effective July 8, 2011, which is the date the governor signed Act 414, the department must recertify all Louisiana Entrepreneurial Businesses and all annual and program caps for individual businesses will start over.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6020 through 6020.4 and R.S. 36:104.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 32:228 (February 2006), amended LR 32:1594 (September 2006), LR 37:

### §3303. Accredited Investor

A. An *accredited investor* shall be defined as:

1. an angel pool (which may be a limited liability corporation or limited liability partnership, as provided below) as determined by the department, all of whose participants shall be accredited investors;

2. a person who has individual net worth, or joint net worth with the person's spouse, that exceeds \$1 million at the time of the purchase;

3. a person with income exceeding \$200,000 in each of the two most recent years or joint income with a spouse exceeding \$300,000 for those years and a reasonable expectation of the same income level in the current year;

4. persons, including corporations, partnerships, limited liability partnerships and limited liability corporations composed of persons meeting the qualifications of Paragraphs A.2 and 3 of this Section, provided that the person's share of the tax credits of the entrepreneurial business shall not exceed that person's share of the profits of the entrepreneurial business or a person's share of the tax credits as a partner or a member of a limited liability corporation or partnership shall not exceed that person's share of the profits of the LLC.

B. Angel pools may receive certification from the department upon showing:

1. the proposed pool of investors is organized solely for the purposes of making angel investments;

2. participants in the pool are given the opportunity to screen applicants for pool investments and to participate in deal reviews as well as post investment review of company performance;

3. participants are given the opportunity to opt in or out of proposed angel investments and are not participating solely upon the determinations of an investment or fund manager;

4. such other factors of operation of the pool as may distinguish it from the operation of a venture fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6020 through 6020.4 and R.S. 36:104.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 32:228 (February 2006), amended LR 32:1594 (September 2006), LR 37:

### §3305. Louisiana Entrepreneurial Business

A. A *Louisiana Entrepreneurial Business* shall be defined as those businesses approved by the department under Act 414 and that meet the following requirements.

1. A business shall provide the department with a business plan that includes all appropriate long and short term forecasts and contingencies of business operations, including research and development, profit, loss and cash flow projections and details of expenditure of angel investor funding in accordance with Act 414 and shall also include the following:

a. the principal business operations of the business are located in Louisiana including Louisiana as the primary place of employment for the employees of the business;

b. demonstrating a plan or progression through which more than 50 percent of its sales will be from outside of Louisiana;

c. employs 50 or fewer full-time employees; and

d. the business has either gross annual sales of less than \$10 million or a business net worth of less than \$2 million.

2. Exclusions

a. Businesses primarily engaged in the following activities are not eligible to be certified as a Louisiana Entrepreneurial Business: retail sales, real estate, professional services, gaming or gambling, natural resource extraction or exploration, and financial services, including venture capital funds.

b. Businesses primarily engaged in the following activities may qualify as a Louisiana Entrepreneurial Business but only if the department, in its discretion, determines from the business plan that the company is a wealth-creating business for Louisiana: state or local government enterprises, business associations and professional organizations as defined in North American Industry Classification System (NAICS) code 8139, automotive rental and leasing, local solid waste disposal, local sewage systems and local water systems businesses, hospitals or nonprofit organizations.

3. Such other findings by the department as shall be consistent with Act 414, provided that under no circumstances shall the department's certification of the applicant as a Louisiana Entrepreneurial Business be considered or implied to be an endorsement of the business or any investment in that business and the applicant shall so advise all investors of this fact.

B. Certification of a Louisiana Entrepreneurial Business shall be obtained from the department by submitting the above business plan together with the Louisiana taxpayer identification number of the business and all other information regarding those items necessary to qualify the investment in the business for the angel tax credit as provided for by Act 414 electronically to an email address specified by the department on its website. Upon receipt, the department shall make such requests for other information necessary to a determination that the business should or should not be certified as a Louisiana Entrepreneurial Business. The department's certification of the business shall include the Louisiana taxpayer identification number of the business. This certification shall be in effect for one year



from the date of the department's letter. The certification may be extended for additional one year periods upon application to the department showing that the business continues to be an entrepreneurial business within the meaning of the act and these rules, and the application includes the use of proceeds previously raised, number of employees, amount of payroll, annual revenue, and such other information as shall be requested by the department. In order to continue to be certified, the business shall be in compliance with all reporting and other provisions of Act 414 and these rules with respect to the administration of the credits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6020 and R.S. 36:104.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 32:228 (February 2006), amended LR 32:1594 (September 2006), LR 37:

### **§3307. The Amount, Allocation and Limitations of the Angel Investor Tax Credits**

A. The following rules shall be applicable to investments by Accredited Investors in Louisiana Entrepreneurial Businesses.

1. For calendar year 2011, the department will begin accepting applications on September 1 and for calendar years 2012-2015, the department will begin accepting applications on January 1. The allocation of credits for all years will be administered on a first come, first serve basis until the annual \$5 million cap has been reached. However, on the day that the cap is reached, all applications received that day will be treated as received at the same time and the credits remaining for allocation that day will be prorated.

a. Upon receipt of an application for the reservation of credits, the department will send the business a reservation letter indicating the dollar amount of credits which their investors are entitled to receive if proof of investment can be shown.

b. Each business applicant will have to decide on their application if they are willing to accept a prorated credit amount should their application be received on the day the cap is reached. The business will also have to determine what percentage of proration they will accept. If the business does not indicate in their application a willingness to accept a prorated credit amount at the percentage of proration available on the day the cap is reached, their application will be deemed to have been received the day following the day in which the cap was reached.

c. Proof of investment must be provided to the department within 60 days from the date of the reservation letter. The department will accept the Subscription Agreement as required by the Securities and Exchange Commission as proof of investment.

d. If proof of investment is made within the requisite 60 day period, the department will issue a tax credit certification letter to the investor.

(i) The tax credit certification letter will include the investor's name, address, Louisiana taxpayer identification number and the amount of the credit. The tax credit certification letter will include a breakdown of which years and in what amounts per year the credit will be claimed.

(ii) The Louisiana Department of Revenue will receive a copy of the tax credit certification letter for purposes of verification of the credits.

e. If proof of investment is not provided to the department within the requisite 60 day period, the angel investor tax credits which had been reserved for that company's investors will be added to the remaining available annual credit cap.

f. Any returned reservation credits whose businesses could not provide proof of investment within 60 days, will be allocated when available on a first come, first serve basis until the annual \$5 million cap has been reached. However, on the day that the cap is reached, all applications received that day will be treated as received at the same time and the credits remaining for allocation that day will be prorated. Returned reservation credits will be made available the sooner of 1) the day returned reservation credits exceed the amount of credits requested in applications in line to receive credits the next day or 2) the day all 60 day proof of investment periods have expired. The timeline for proof of investment will be the same 60 day period as mentioned above.

g. A business who fails to provide proof of investment within 60 days will not be allowed to apply for angel investor credits again for a three month period. The three month period will begin on the day following the end of the 60 day period for proof of investment.

B. All applications for the reservation of credits shall be made on a form prescribed by the department. All applications for the reservation of credits shall be submitted to the department electronically to an email address specified by the department on its website.

C. An investment earns tax credits in the calendar year in which the investment is made. The request for the reservation of credits for an investment must be made in the same year in which the investment is made.

D. The Angel Investor tax credits should be claimed on the investor's income and corporation franchise tax returns in accordance with the statutory requirements of R.S. 47:6020(D)(3).

E. Transfers of the Angel Investor tax credits will be allowed in compliance with R.S. 47:6020(F).

F. The Angel Investor Tax Credit Program has a program cap of \$5 million in tax credits granted per calendar year. In the event that the total amount of credits granted in any calendar year is less than \$5 million, any residual amount of unused credits shall carry forward for use in subsequent years and may be granted in addition to the \$5 million limit for each year.

G. For purposes of receiving Angel Investor tax credits, an investor may not invest more than \$1 million per year per business or more than \$2 million per business total over the life of the program.

H. The department has the authority to change the administration of the Angel Investor tax credit program when it is deemed necessary for the effective administration of the program. Notice of any change in administration will be done with 10 day prior notice published on the department's website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6020 and R.S. 36:104.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 32:229 (February 2006), amended LR 32:1595 (September 2006), LR 37:

Steven Grissom  
Secretary

1108#053

## DECLARATION OF EMERGENCY

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

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

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

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

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

Effective August 21, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing adopts the provisions governing Medicaid coverage of substance abuse services covered under the Early and Periodic Screening, Diagnosis and Treatment Program.

## Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part XV. Services for Special Populations

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

#### Chapter 93. Substance Abuse Services

#### §9301. General Provisions

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

#### §9303. Reimbursement Methodology

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

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

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

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein  
Secretary

1108#059

## DECLARATION OF EMERGENCY

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

#### Disproportionate Share Hospital Payments Low Income and Needy Care Collaboration (LAC 50:V.2503 and 2713)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.2503 and adopts §2713 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repromulgated all of the Rules governing the disproportionate share hospital (DSH) payment methodology in LAC 50:V.Chapters 25 and 27 (*Louisiana Register*, Volume 34, Number 4). The department amended the provisions governing disproportionate share hospital payments to provide for a supplemental payment to hospitals that enter into an agreement with a state or local governmental entity for the purpose of providing healthcare services to low income and needy patients (*Louisiana Register*, Volume 36, Number 1). The department promulgated an Emergency Rule which amended the provisions of the January 20, 2010 Emergency Rule to revise the participation requirements for the Low Income and Needy Care Collaboration (*Louisiana Register*, Volume 37, Number 1). This Emergency Rule is being promulgated to continue the provisions of the January 1, 2011 Emergency Rule. This action is being taken to secure new federal funding and to promote the public health and welfare of uninsured individuals by assuring that hospitals are adequately reimbursed for furnishing uncompensated care.

Effective August 31, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing disproportionate share hospital payments.

#### Title 50

#### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part V. Medical Assistance Program—Hospital Services

#### Subpart 3. Disproportionate Share Hospital Payments

#### Chapter 25. Disproportionate Share Hospital Payment Methodologies

#### §2503. Disproportionate Share Hospital Qualifications

##### A. - A.5. ....

6. effective September 15, 2006, be a non-rural community hospital as defined in §2701.A.;

7. effective January 20, 2010, be a hospital participating in the Low Income and Needy Care Collaboration as defined in §2713.A.; and

8. effective July 1, 1994, must also have a Medicaid inpatient utilization rate of at least 1 percent.

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

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

Services Financing, LR 34:655 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

#### Chapter 27. Qualifying Hospitals

#### §2713. Low Income and Needy Care Collaboration

##### A. Definitions

*Low Income and Needy Care Collaboration Agreement*—an agreement between a hospital and a state or local governmental entity to collaborate for purposes of providing healthcare services to low income and needy patients.

B. In order to qualify under this DSH category in any period, a hospital must be party to a Low Income and Needy Care Collaboration Agreement with the Department of Health and Hospitals in that period.

C. DSH payments to Low Income and Needy Care Collaborating Hospitals shall be calculated as follows.

1. In each quarter, the department shall divide hospitals qualifying under this DSH category into two pools. The first pool shall include hospitals that, in addition to qualifying under this DSH category, also qualify for DSH payments under any other DSH category. Hospitals in the first pool shall be eligible to receive DSH payments under §2713.C.2 provisions. The second pool shall include all other hospitals qualifying under this DSH category. Hospitals in the second pool shall be eligible to receive DSH payments under §2713.C.3 provisions.

2. In each quarter, to the extent the department appropriates funding to this DSH category, hospitals that qualify under the provisions of §2713.C.2 shall receive 100 percent of the total amount appropriated by the department for this DSH category.

a. If the net uncompensated care costs of these hospitals exceed the amount appropriated for this pool, payment shall be made based on each hospital's pro rata share of the pool.

i. The pro rata share shall be calculated by dividing the hospital's net uncompensated care costs by the total of the net uncompensated care costs for all hospitals qualifying under §2713.C.2 and multiplying by the amount appropriated by the department.

b. If the amount appropriated for this DSH category exceeds the net uncompensated care costs of all hospitals qualifying under §2713.C.2, payment shall be made up to each hospital's net uncompensated care costs.

c. Any amount available after all distributions are made under §2713.C.2 provisions shall be distributed subject to the provisions in §2713.C.3.

3. In each quarter, to the extent distributions are available, and after all distributions are made under §2713.C.2 provisions, distributions under §2713.C.3 provisions shall be made according to the following terms.

a. If the net uncompensated care costs of all hospitals qualifying for payment under §2713.C.3 provisions exceed the amount available for this pool, payment shall be made based on each hospital's pro rata share of the pool.

i. The pro rata share shall be calculated by dividing its net uncompensated care costs by the total of the net uncompensated care costs for all hospitals qualifying under §2713.C.3.

b. If the amount available for payments under §2713.C.3 exceeds the net uncompensated care costs of all

qualifying hospitals, payments shall be made up to each hospital's net uncompensated care costs and the remaining amount shall be used by the department to make disproportionate share payments under this DSH category in future quarters.

D. In the event it is necessary to reduce the amount of disproportionate share payments under this DSH category to remain within the federal disproportionate share allotment in any quarter, the department shall calculate a pro rata decrease for each hospital qualifying under the provisions of §2713.C.3.

1. The pro rata decrease shall be based on a ratio determined by:

a. dividing that hospital's DSH payments by the total DSH payments for all hospitals qualifying under §2713.C.3 in that quarter; and

b. multiplying the amount of DSH payments calculated in excess of the federal disproportionate share allotment.

2. If necessary in any quarter, the department will reduce Medicaid DSH payments under these provisions to zero for all applicable hospitals.

E. After the reduction in §2713.D has been applied, if it is necessary to further reduce the amount of DSH payments under this DSH category to remain within the federal disproportionate share allotment in any quarter, the department shall calculate a pro rata decrease for each hospital qualifying under §2713.C.2.

1. The pro rata decrease shall be based on a ratio determined by:

a. dividing that hospital's DSH payments by the total DSH payments for all hospitals qualifying under §2713.C.2 in that quarter; and

b. multiplying the amount of DSH payments calculated in excess of the federal disproportionate share allotment.

2. If necessary in any quarter, the department shall reduce Medicaid DSH payments under these provisions to zero for all applicable hospitals.

F. Qualifying hospitals must submit costs and patient specific data in a format specified by the department. Costs and lengths of stay will be reviewed for reasonableness before payments are made.

G. Payments shall be made on a quarterly basis, however, each hospital's eligibility for DSH and net uncompensated care costs shall be determined on an annual basis.

H. Payments to hospitals qualifying under this DSH category shall be made subsequent to any DSH payments for which a hospital is eligible under another DSH category.

I. Aggregate DSH payments for hospitals that receive payment from this category, and any other DSH category, shall not exceed the hospital's specific DSH limit. If payments calculated under this methodology would cause a hospital's aggregate DSH payment to exceed the limit, the payment from this category shall be capped at the hospital's specific DSH limit. The remaining payments shall be redistributed to the other hospitals in accordance with these provisions.

J. If the amount appropriated for this DSH category exceeds the specific DSH limits of all qualifying hospitals, payment will be made up to each hospital's specific DSH limit and the remaining amount shall be used by the department to make disproportionate share payments under this DSH category in future quarters.

K. Effective for dates of service on or after January 1, 2011, all parties that participate in Medicaid DSH payments under this Section, either as a qualifying hospital by receipt of Medicaid DSH payments or as a state or local governmental entity funding Medicaid DSH payments, must meet the following conditions during the period of their participation:

1. Each participant must comply with the prospective conditions of participation in the Louisiana Private Hospital Upper Payment Limit Supplemental Reimbursement Program.

2. A participating hospital may not make a cash or in-kind transfer to their affiliated governmental entity that has a direct or indirect relationship to Medicaid payments and would violate federal law.

3. A participating governmental entity may not condition the amount it funds the Medicaid Program on a specified or required minimum amount of low income and needy care.

4. A participating governmental entity may not assign any of its contractual or statutory obligations to an affiliated hospital.

5. A participating governmental entity may not recoup funds from an affiliated hospital that has not adequately performed under the Low Income and Needy Care Collaboration Agreement.

6. A participating hospital may not return any of the Medicaid DSH payments it receives under this Section to the governmental entity that provides the non-federal share of the Medicaid DSH payments.

7. A participating governmental entity may not receive any portion of the Medicaid DSH payments made to a participating hospital under this Section.

L. Each participant must certify that it complies with the requirements of §2713.K by executing the appropriate certification form designated by the department for this purpose. The completed form must be submitted to the Department of Health and Hospitals, Bureau of Health Services Financing.

M. Each qualifying hospital must submit a copy of its Low Income and Needy Care Collaboration Agreement to the department.

N. The Medicaid DSH payments authorized in LAC 50:V.Subpart 3 shall not be considered as interim Medicaid inpatient payments in the determination of cost settlement amounts for inpatient hospital services rendered by children's specialty hospitals.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for

responding to all inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein  
Secretary

1108#058

## DECLARATION OF EMERGENCY

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

Greater New Orleans Community  
Health Connection Waiver  
(LAC 50:XXII.Chapters 61-69)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:XXII.Chapters 61-69 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953 (B)(1), et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

In July 2007, the Department of Health and Hospitals was awarded a \$100 million Primary Care Access Stabilization Grant (PCASG) from the Department of Health and Human Services, Centers for Medicare and Medicaid Services as a result of the disruption of primary health care service delivery in the greater New Orleans area due to Hurricanes Katrina and Rita. The PCASG was a three-year grant program designed to restore and expand access to primary care services, including behavioral health and dental services, without regard to a patient's ability to pay. The intent of the program was to restore and stabilize the provision of primary health care services in the New Orleans area by providing short-term financial relief to providers and to decrease reliance on costly emergency room services for patients who were uninsured, underinsured, or receiving Medicaid benefits. The PCASG program will end on September 30, 2010.

As a result of the termination of PCASG funds, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which implemented a demonstration program under the authority of a Section 1115 Waiver, called the Greater New Orleans Community Health Connection (GNOCHC) Waiver, to ensure continued access to primary and behavioral health care services that were restored and expanded in the greater New Orleans area (*Louisiana Register*, Volume 36, Number 10). Under this demonstration waiver, the Medicaid Program will provide coverage for primary and behavioral health care services delivered to eligible residents in Jefferson, Orleans, Plaquemines and St. Bernard parishes who have family income up to 200 percent of the federal poverty level.

The department promulgated an Emergency Rule which amended the provisions of the October 1, 2010 Emergency Rule in order to establish provisions that will allow waiver recipients in the Family Planning Waiver and the GNOCHC

Waiver to receive health care services through both waiver programs simultaneously (*Louisiana Register*, Volume 37, Number 5). This Emergency Rule is being promulgated to continue the provisions of the May 20, 2011 Emergency Rule. This action is being taken to protect the health and welfare of uninsured individuals in the greater New Orleans area by ensuring continued access to primary care and family planning services.

Effective September 18, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the Greater New Orleans Community Health Connection Waiver.

#### Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part XXII. 1115 Demonstration Waivers

#### Subpart 7. Greater New Orleans Community Health Connection Waiver

#### Chapter 61. General Provisions

##### §6101. Purpose

A. Upon approval from the Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), the Department shall implement a Section 1115 demonstration waiver called the Greater New Orleans Community Health Connection (GNOCHC) Waiver to provide primary and behavioral health care services to eligible uninsured residents in the greater New Orleans area.

B. The intent of the GNOCHC Waiver is to preserve primary and behavioral health care access that was restored and expanded in the greater New Orleans area with Primary Care Access and Stabilization Grant (PCASG) funds awarded by CMS after Hurricanes Katrina and Rita. Implementation of this waiver program is expected to reduce reliance on costlier emergency room services to meet primary care needs.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

##### §6103. Program Design

A. The GNOCHC Waiver is designed to transition the PCASG medical home model to a financially sustainable model utilizing other funding resources over the long-term.

B. The waiver is a 39 month demonstration project which shall be implemented in two primary phases which span four fiscal years.

C. Phase one of the GNOCHC Waiver shall focus on preserving access to primary care services and developing a CMS approved plan for transitioning the funding of the demonstration project to long-term revenue sources. Phase two focuses on implementing the transition plan, assessment, and the demonstration project phase-down.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

#### Chapter 63. Eligibility

##### §6301. General Provisions

A. The targeted population for GNOCHC Waiver services shall be uninsured adults who live in the greater New Orleans area. For purposes of these provisions, the greater New Orleans area shall consist of the following parishes:

1. Jefferson;
2. Orleans;
3. Plaquemines; and
4. St. Bernard.

B. All applicants shall be pre-screened to determine possible eligibility for coverage in other Medicaid or Children's Health Insurance Programs (CHIP) prior to determining eligibility for GNOCHC Waiver services.

C. Retroactive coverage is not available in the GNOCHC Waiver program. The effective date of coverage for eligible recipients shall be the first day of the month in which the application for services was received.

D. At the department's discretion and upon CMS approval, the following measures may be taken to manage eligibility for these services to ensure that waiver expenditures do not exceed funding allocations. The department may:

1. employ a first come, first served reservation list to manage the number of applications received;
2. limit the number of applications provided to potential recipients; or
3. impose enrollment limits;

E. Waiver recipients shall undergo an eligibility redetermination at least once every 12 months. Each redetermination shall include an assessment of the individual's eligibility for coverage in other Medicaid or CHIP programs.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

### **§6303. Recipient Qualifications**

A. GNOCHC Waiver services shall be provided to individuals who:

1. have been uninsured for at least 6 months;
2. are not pregnant;
3. are age 19 through 64 years old;
4. are not otherwise eligible for Medicaid, CHIP or Medicare coverage, with the exception of TAKE CHARGE Family Planning Waiver participants and recipients who receive coverage through the Tuberculosis Infected Program;
5. are a resident of any one of the parishes in the greater New Orleans area as defined in §6301.A;
6. have family income up to 200 percent of the federal poverty level; and
7. meet citizenship requirements under the Deficit Reduction Act of 2008 and the Children's Health Insurance Program Reauthorization Act of 2009.

B. A waiver recipient shall be disenrolled from the program if any one of the following occurs. The recipient:

1. has family income that exceeds the income limits at redetermination;
2. voluntarily withdraws from the program;
3. no longer resides in a parish within the greater New Orleans area;
4. becomes incarcerated or becomes an inpatient in an institution for mental disorders;
5. obtains health insurance coverage;
6. turns 65 years old; or
7. dies.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

## **Chapter 65. Services**

### **§6501. Covered Services**

A. The following services shall be available to GNOCHC Waiver recipients:

1. care coordination;
2. immunizations and influenza vaccines;
3. laboratory and radiology;
4. behavioral health care;
5. pharmacy;
6. primary health care;
7. preventive health care;
8. substance abuse; and
9. specialty care (covered with a referral from the primary care physician).

B. Cost-sharing may be applicable to the services rendered in this waiver program. All demonstration cost-sharing shall be in compliance with federal statutes, regulations and policies. A waiver recipient's share of the cost shall be restricted to a 5 percent aggregate limit per family.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

### **§6503. Service Delivery**

A. All of the covered services under this waiver program shall be delivered by an existing PCASG funded clinic.

B. All services shall be delivered on an outpatient basis. Reimbursement shall not be made under this waiver program for services rendered to recipients who meet inpatient status.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

## **Chapter 67. Provider Participation**

### **§6701. General Provisions**

A. All clinics participating in the delivery of services covered under the GNOCHC Waiver shall adhere to all of the applicable federal and state regulations, policy, Rules, manuals and laws.

B. Each participating clinic shall meet the following requirements. The clinic shall:

1. be an existing PCASG funded clinic;
2. be operational and serving waiver recipients on October 1, 2010;
  - a. if a former PCASG clinic wishes to reestablish operations as a GNOCHC participating clinic after October 1, 2010, CMS approval shall be required;
3. be a public or private not-for-profit entity that meets the following conditions:
  - a. the entity must not be an individual practitioner in private solo or group practice;
  - b. the clinic shall be currently licensed, if applicable;
  - c. either the clinic or its licensed practitioners shall be currently enrolled in the Medicaid Program; and
  - d. all health care practitioners affiliated with the clinic that provide health care treatment, behavioral health counseling, or any other type of clinical health care services to patients shall hold a current, unrestricted license to

practice in the state of Louisiana within the scope of that licensure;

4. provide full disclosure of ownership and control, including but not limited to any relative contractual agreements, partnerships, etc.;

5. have a statutory, regulatory or formally established policy commitment (e.g. through corporate bylaws) to serve all people, including patients without insurance, at every income level regardless of their ability to pay for services, and be willing to accept and serve new publicly insured and uninsured individuals;

6. maintain one or more health care access points or service delivery sites for the provision of health care services which may include medical care, behavioral health care and substance abuse services, either directly on-site or through established contractual arrangements; and

7. be capable of implementing and evaluating the effectiveness of an organization-specific strategic plan to become a sustainable organizational entity by December 31, 2013 which is capable of permanently providing primary or behavioral health care services to residents in the greater New Orleans area.

a. For purposes of these provisions, a sustainable organizational entity shall be defined as an entity actively developing, implementing and evaluating the effectiveness of its organization to diversify its operating income and funding resources to include non-demonstration funding sources.

C. Participating providers/clinics shall be responsible for:

1. collection of all data on the services rendered to demonstration participants through encounter data or other methods so specified by the department; and

2. maintenance of such data at the provider level.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

### **§6703. Reporting Requirements**

A. GNOCHC participating clinics shall be required to provide a sustainability plan to the department by March 1, 2011.

B. Semi-annual progress reports on the sustainability plan shall be submitted during the second and fourth quarter of each demonstration year. The first annual report is due in the fourth quarter of the first demonstration year.

C. Participating providers/clinics shall be required to provide encounter data in the format and frequency specified by the department.

D. Clinics that do not comply with these reporting requirements shall not be eligible to receive payments from this demonstration program and may receive financial penalties for noncompliance.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

## **Chapter 69. Reimbursement**

### **§6901. General Provisions**

A. Clinics shall ensure that reimbursement for services covered under the GNOCHC Waiver is requested only for those individuals who meet the program criteria.

B. Federal financial participation (FFP) for this waiver program is limited to the federal share of \$30 million annually in demonstration expenditures in each of the first three years of the demonstration. In year four, FFP is limited to the federal share of \$7.5 million. Thus, the total FFP for this demonstration waiver program over all four years is limited to the federal share of \$97.5 million. Federal funding will not be available for expenditures in excess of these annual limits even when the expenditure limit was not reached in prior years.

1. These provisions do not preclude the department from including as allowable expenditures for a particular demonstration year any expenditures incurred after the end of a demonstration year for items or services furnished during that year.

C. The federal share of expenditures for payments to GNOCHC providers shall be calculated based upon the applicable federal medical assistance percentage rate for the year in which the expenditures were incurred.

D. The department may make an urgent sustainability payment to any eligible GNOCHC clinic that meets the criteria of this Chapter 67 and requires financial support to maintain clinical operations while the department seeks CMS approval for the funding and reimbursement protocol for this waiver program.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

### **§6903. Reimbursement Methodology**

#### **A. Urgent Sustainability Payments**

1. For each clinic requiring an urgent sustainability payment, the department shall determine the average payment based upon the clinic's three-year historical grant award received under the PCASG program.

2. The sustainability payment shall be no more than 25 percent of the average annual payment determined for that clinic during the PCASG period. Prior approval from CMS shall be required for sustainability payments in excess of 25 percent of the clinic's average PCASG payment. The department may disburse the payment in the first quarter of demonstration year one.

3. Upon CMS approval of the payment methodology, the department shall reconcile the amount of sustainability payments made to clinics during the period of October 1, 2010 through December 31, 2010 against the actual payments that would have been made to the clinics under the approved payment methodology.

a. Any overpayments made to a clinic shall be recouped from the clinic's payments due in the quarter following the reconciliation.

b. Any underpayments made to a clinic shall be made in the quarter following the reconciliation.

4. The total of all sustainability payments made during the first quarter in demonstration year one shall not exceed \$7.5 million. Any sustainability payments made shall be applied to the \$30 million total computable annual allotment for demonstration year one.

B. Reimbursement for services rendered during phase one and phase two of the demonstration shall be made according to the rate methodology established by the

department and approved by CMS in the funding and reimbursement protocol for this waiver program.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein  
Secretary

1108#060

## DECLARATION OF EMERGENCY

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

#### Home and Community-Based Services Waivers Children's Choice Allocation of Waiver Opportunities (LAC 50:XXI.11107)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend LAC 50:XXI.11107 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities adopted provisions in the Children's Choice Waiver for the allocation of additional waiver opportunities for the Money Follows the Person Rebalancing Demonstration Program (*Louisiana Register*, Volume 35, Number 9). The department promulgated an Emergency Rule which amended the provisions of the Children's Choice Waiver to provide for the allocation of waiver opportunities for children who have been identified by the Office for Citizens with Developmental Disabilities regional offices and human services authorities and districts as meeting state-funded family support criteria for priority level 1 and 2, and needing more family support services than what is currently available through state-funded family support services (*Louisiana Register*, Volume 36, Number 9). This Emergency Rule is being promulgated to continue the provisions of the September 20, 2010 Emergency Rule. This action is being taken to secure enhanced federal funding.

Effective September 18, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend the provisions governing the allocation of opportunities in the Children's Choice Waiver.

## Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE Part XXI. Home and Community-Based Services Waivers

#### Subpart 9. Children's Choice

#### Chapter 111. General Provisions

#### §11107. Allocation of Waiver Opportunities

A. The order of entry in the Children's Choice Waiver is first come, first served from a statewide list arranged by date of application for the Developmental Disabilities Request for Services Registry for the New Opportunities Waiver. Families shall be given a choice of accepting an opportunity in the Children's Choice Waiver or remaining on the DDRFSR for the NOW.

1. The only exceptions to the first come, first served allocation of waiver opportunities shall be for the:

a. Money Follows the Person Rebalancing Demonstration waiver opportunities which are allocated to demonstration participants only; and

b. waiver opportunities which are allocated to children who have been determined to need more services than what is currently available through state funded family support services.

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

C. Four hundred twenty-five opportunities shall be designated for qualifying children with developmental disabilities that have been identified by the Office for Citizens with Developmental Disabilities (OCDD) regional offices and human services authorities and districts as needing more family support services than what is currently available through state funded family support services.

1. To qualify for these waiver opportunities, children must:

a. be under 18 years of age;

b. be designated by the OCDD regional office, human services authority or district as meeting priority level 1 or 2 criteria;

c. be Medicaid eligible;

d. be eligible for state developmental disability services; and

e. meet the ICF/DD level of care.

2. Each OCDD regional office and human services authority or district shall be responsible for the prioritization of these opportunities. Priority levels shall be defined according to the following criteria:

a. Priority Level 1. Without the requested supports, there is an immediate or potential threat of out-of-home placement or homelessness due to:

i. the individual's medical care needs;

ii. documented abuse or neglect of the individual;

iii. the individual's intense or frequent challenging behavioral needs; or

iv. death or inability of the caregiver to continue care due to their own age or health; or

v. the possibility that the individual may experience a health crisis leading to death, hospitalization or placement in a nursing facility.

b. Priority Level 2. Supports are needed to prevent the individual's health from deteriorating or the individual from losing any of their independence or productivity.

3. Children who qualify for one of these waiver opportunities are not required to have a protected request



date on the Developmental Disabilities Request for Services Registry.

4. Each OCDD regional office, human services authority and district shall have a specific number of these opportunities designated to them for allocation to waiver recipients.

5. In the event one of these opportunities is vacated, the opportunity shall be returned to the allocated pool for that particular OCDD regional office, human services authority or district for another opportunity to be offered.

6. Once all of these opportunities are filled, supports and services, based on the priority determination system, will be identified and addressed through other resources currently available for individuals with developmental disabilities.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 35:1892 (September 2009), amended LR 37:

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

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein  
Secretary

1108#061

## DECLARATION OF EMERGENCY

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

#### Home and Community-Based Services Waivers Residential Options Waiver (LAC 50:XXI.Chapters 161-169)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend LAC 50:XXI.Chapters 161-169 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B) (1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office for Citizens with Developmental Disabilities adopted provisions establishing the Residential Options Waiver (ROW), a home and community-based services (HCBS) waiver program, to promote independence for individuals with developmental disabilities by offering a wide array of services, supports and residential options that assist individuals to transition from

institutional care (*Louisiana Register*, Volume 33, Number 11). The department promulgated an Emergency Rule which amended the November 20, 2007 Rule to revise the provisions governing the allocation of waiver opportunities and the delivery of services in order to provide greater clarity (*Louisiana Register*, Volume 36, Number 4). As a result of a budgetary shortfall in state fiscal year 2011, the department promulgated an Emergency Rule which amended the provisions governing the Residential Options Waiver to clarify the provisions governing the annual service budget for waiver participants and to reduce the reimbursement rates for waiver services (*Louisiana Register*, Volume 36, Number 8). The department promulgated an Emergency Rule which amended the provisions of the May 1, 2010 Emergency Rule to incorporate the provisions of the August 1, 2010 Emergency Rule (*Louisiana Register*, Volume 36, Number 8). The department promulgated an Emergency Rule which amended the provisions of the August 20, 2010 Emergency Rule governing the allocation of waiver opportunities in order to adopt criteria for crisis diversion, to revise the provisions governing the individuals who may be offered a waiver opportunity, and to clarify the provisions governing the Developmental Disabilities Request for Services Registry (*Louisiana Register*, Volume 37, Number 6). This Emergency Rule is being promulgated to continue the provisions of the May 20, 2011 Emergency Rule. This action is being taken to comply with the provisions of the approved waiver application and to secure enhanced federal funding.

Effective August 18, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend the provisions governing the Residential Options Waiver.

### Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE Part XXI. Home and Community Based Services Waivers

#### Subpart 13. Residential Options Waiver

#### Chapter 161. General Provisions

#### §16101. Introduction

A. The Residential Options Waiver (ROW), a 1915(c) home and community-based services (HCBS) waiver, is designed to enhance the long-term services and supports available to individuals with developmental disabilities. These individuals would otherwise require an intermediate care facility for persons with developmental disabilities (ICF/DD) level of care.

B. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2441 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

#### §16103. Program Description

A. The ROW is designed to utilize the principles of self determination and to supplement the family and/or community supports that are available to maintain the individual in the community. In keeping with the principles of self-determination, ROW includes a self-direction option

which allows for greater flexibility in hiring, training and general service delivery issues. ROW services are meant to enhance, not replace existing informal networks.

B. ROW offers an alternative to institutional care that:

1. utilizes a wide array of services, supports and residential options which best meet the individual's needs and preferences;

2. meets the highest standards of quality and national best practices in the provision of services; and

3. ensures health and safety through a comprehensive system of participant safeguards.

4. Repealed.

C. All ROW services are accessed through the support coordination agency of the participant's choice.

1. The plan of care (POC) shall be developed using a person-centered process coordinated by the participant's support coordinator.

D. All services must be prior authorized and delivered in accordance with the approved POC.

E. The total expenditures available for each waiver participant is established through an assessment of individual support needs and will not exceed the approved ICF/DD ICAP rate established for that individual.

1. When the department determines that it is necessary to adjust the ICF/DD ICAP rate, each waiver participant's annual service budget shall be adjusted to ensure that the participant's total available expenditures do not exceed the approved ICAP rate.

F. No reimbursement for ROW services shall be made for a participant who is admitted to an inpatient setting.

G. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2441 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

### **§16105. Participant Qualifications**

A. In order to qualify for services through the ROW, an individual must be offered a ROW opportunity and meet all of the following criteria:

1. have a developmental disability as specified in the Louisiana Developmental Disability Law and determined through the developmental disabilities system entry process;

2. meet the requirements for an ICF/DD level of care which requires active treatment for developmental disabilities under the supervision of a qualified developmental disabilities professional;

3. meet the financial eligibility requirements for the Louisiana Medicaid Program;

4. be a resident of Louisiana; and

5. be a citizen of the United States or a qualified alien.

B. Assurances are required that the health, safety and welfare of the individual can be maintained in the community with the provision of ROW services.

1 – 3.c. Repealed.

C. Justification must be documented in the OCDD approved POC that the ROW services are appropriate, cost effective and represent the least restrictive environment for the individual.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2441 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and Office for Citizens with Developmental Disabilities, LR 37:

### **§16106. Money Follows the Person Rebalancing Demonstration A.**

A. The Money Follows the Person (MFP) Rebalancing Demonstration is a federal demonstration grant awarded by the Centers for Medicare and Medicaid Services to the Department of Health and Hospitals. The MFP demonstration is a transition program that targets individuals using qualified institutional services and moves them to home and community-based long-term care services.

1. For the purposes of these provisions, a qualified institution is a nursing facility, hospital, or Medicaid enrolled intermediate care facility for people with developmental disabilities (ICF/DD).

B. Participants must meet the following criteria for participation in the MFP Rebalancing Demonstration.

1. Participants with a developmental disability must:

a. occupy a licensed, approved Medicaid enrolled nursing facility, hospital or ICF/DD bed for at least three consecutive months; and

b. be Medicaid eligible, eligible for state developmental disability services, and meet an ICF/DD level of care.

2. The participant or his/her responsible representative must provide informed consent for both transition and participation in the demonstration.

C. Participants in the demonstration are not required to have a protected date on the developmental disabilities request for services registry.

D. All other ROW provisions apply to the Money Follows the Person Rebalancing Demonstration.

E. MFP participants cannot participate in ROW shared living services which serve more than four persons in a single residence.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and Office for Citizens with Developmental Disabilities, LR 37:

### **§16107. Programmatic Allocation of Waiver Opportunities**

A. The Developmental Disabilities Request for Services Registry (RFSR), hereafter referred to as "the registry," shall be used to evaluate individuals for ROW opportunities and to fill waiver opportunities for persons with developmental disabilities, except for those specific opportunities to be provided to persons who are described in Paragraph B.1-5 of this Section, who are not on the registry.

1. The next individual on the registry shall be notified in writing that a waiver opportunity is available and that he/she is next in line to be evaluated for a possible waiver assignment. The individual shall then choose a support coordination agency that will assist in the gathering of the documents needed for both the financial eligibility and medical certification process for the level of care determination.

a. - e. Repealed.

2. If the individual is determined to be ineligible, either financially or medically, that individual shall be notified in writing. The next individual on the registry shall be notified, as stated in Paragraph B.1 of this Section, and the process continues until an eligible individual is assigned the waiver opportunity.

3. A waiver opportunity shall be assigned to an individual when eligibility is established and the individual is certified. By accepting a ROW opportunity, this person's name will be removed from the registry.

B. ROW opportunities will be offered to the following individuals:

1. persons who meet the ICF/DD level of care and are being serviced through the OCDD Host Home contracts;

2. persons who meet the ICF/DD level of care and who need HCBS due to a health and/or safety crisis situation (crisis diversion):

a. requests for crisis diversion shall be made through OCDD. To be considered for a crisis diversion opportunity, the individual must need long-term supports, not temporary or short-term supports;

b. determination of priority for a crisis diversion ROW opportunity will be considered by OCDD for the individual who is eligible for services and meets one of the following criteria:

- i. homeless;
- ii. at imminent risk of losing current residential placement;
- iii. referred by the judicial system;
- iv. referred by child, adult, or elderly protective authorities;
- v. without a caregiver and cannot adequately care for self;
- vi. with a caregiver who can no longer provide care; or
- vii. whose needs cannot be met within a community living situation;

3. children who:

- a. are from birth to age 18;
- b. reside in a nursing facility;
- c. meet the high-need requirements for a nursing facility level of care, as well as the ROW level of care requirements;
- d. participate in the MFP Rebalancing Demonstration; and
- e. have parents or legal guardians who wish to transition them to a home and community-based residential services waiver;

4. persons who reside in a Medicaid-enrolled ICF/DD and wish to transition to a home and community-based residential services waiver through a voluntary ICF/DD bed conversion process;

5. persons who wish to transition from a supports and services center into a ROW opportunity;

6. adults in nursing facilities (NFs) who wish to transition to home and community-based residential services and who meet the level of care (LOC) that qualifies them for ROW eligibility based on their RFSR protected date on a first come, first served basis; and

7. persons residing in ICFs/DD who wish to transition to a home and community-based residential services setting and are eligible based on their RFSR protected date on a first come, first served basis.

C. The Office for Citizens with Developmental Disabilities has the responsibility to monitor the utilization of ROW opportunities. At the discretion of OCDD, specifically allocated waiver opportunities may be reallocated to better meet the needs of citizens with developmental disabilities in the state of Louisiana.

C.1. - E. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2441 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

### **§16109. Admission Denial or Discharge Criteria**

A. Admission to the ROW Program shall be denied if one of the following criteria is met.

1. The individual does not meet the financial eligibility requirements for the Medicaid Program.

2. The individual does not meet the requirements for an ICF/DD level of care.

3. The individual does not meet developmental disability system eligibility.

4. The individual is incarcerated or under the jurisdiction of penal authorities, courts or state juvenile authorities.

5. The individual resides in another state.

6. The health and welfare of the individual cannot be assured through the provision of ROW services.

7. The individual fails to cooperate in the eligibility determination process or in the development of the POC.

8. Repealed.

B. Participants shall be discharged from the ROW Program if any of the following conditions are determined:

1. loss of Medicaid financial eligibility as determined by the Medicaid Program;

2. loss of eligibility for an ICF/DD level of care;

3. loss of developmental disability system eligibility;

4. incarceration or placement under the jurisdiction of penal authorities, courts or state juvenile authorities;

5. change of residence to another state ;

6. admission to an ICF/DD or nursing facility with the intent to stay and not to return to waiver services;

7. the health and welfare of the participant cannot be assured through the provision of ROW services in accordance with the participant's approved POC;

8. the participant fails to cooperate in the eligibility renewal process or the implementation of the approved POC, or the responsibilities of the ROW participant; or

9. continuity of stay for consideration of Medicaid eligibility under the special income criteria is interrupted as a result of the participant not receiving ROW services during a period of 30 consecutive days;

a. continuity of stay is not considered to be interrupted if the participant is admitted to a hospital, nursing facility or ICF/DD;

i. the participant shall be discharged from the ROW if the treating physician documents that the institutional stay will exceed 90 days;

10. continuity of services is interrupted as a result of the participant not receiving ROW services during a period of 30 consecutive days.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2443 (November 2007) , amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

## **Chapter 163. Covered Services**

### **§16301. Assistive Technology and Specialized Medical Equipment and Supplies**

A. Assistive technology and specialized medical equipment and supplies (AT/SMES) are equipment, devices, controls, appliances, supplies and services which enable the participant to:

1. have life support;
2. address physical conditions;
3. increase ability to perform activities of daily living;
4. increase, maintain or improve ability to function more independently in the home and/or community; and
5. increase ability to perceive, control or communicate.

B. AT/SMES services provided through the ROW include the following services:

1. evaluation of participant needs;
2. customization of the equipment or device;
3. coordination of necessary therapies, interventions or services;
4. training or technical assistance on the use and maintenance of the equipment or device for the participant or, where appropriate, his/her family members, legal guardian or responsible representative;
5. training or technical assistance, when appropriate, for professionals, other service providers, employers, or other individuals who are substantially involved in the participant's major life functions;
6. all service contracts and warranties included in the purchase of the item by the manufacturer; and
7. equipment or device repair and replacement of batteries and other items that contribute to ongoing maintenance of the equipment or device.

a. Separate payment will be made for repairs after expiration of the warranty only when it is determined to be cost effective.

C. Approval of AT/SMES services through ROW is contingent upon the denial of a prior authorization request for the item as a Medicaid State Plan service and demonstration of the direct medical, habilitative or remedial benefit of the item to the participant.

1. Items reimbursed in the ROW may be in addition to any medical equipment and supplies furnished under the Medicaid State Plan.

a. - 7. Repealed.

D. ...

### **E. Service Exclusions**

1. Assistive technology devices and specialized equipment and supplies that are of general utility or maintenance and have no direct medical or remedial benefit to the participant are excluded from coverage.

2. Any equipment, device, appliance or supply that is covered and has been approved under the Medicaid State Plan, Medicare or any other third party insurance is excluded from coverage.

3. For adults over the age of 20 years, specialized chairs, whether mobile or travel, are not covered.

F. Provider Participation Requirements. Providers of AT/SMES services must meet the following participation requirements. The provider must:

1. be enrolled in the Medicaid Program as a assistive devices or durable medical equipment provider and must meet all applicable vendor standards and requirement for manufacturing, design and installation of technological equipment and supplies;

2. furnish written documentation of authorization to sell, install and/or repair technological equipment and supplies from the respective manufacturer of the designated equipment and supplies; and

3. provide documentation of individual employees' training and experience with the application, use, fitting and repair of the equipment or devices which they propose to sell or repair;

a. upon completion of the work and prior to payment, the provider shall give the participant a certificate of warranty for all labor and installation and all warranty certificates.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2443 (November 2007) , amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

### **§16303. Community Living Supports**

A. Community Living Supports (CLS) are services provided to assist participants to achieve and maintain the outcomes of increased independence, productivity and inclusion in the community by utilizing teaching and support strategies. CLS may be furnished through self-direction or through a licensed, enrolled agency.

B. Community Living Supports are related to acquiring, retaining and improving independence, autonomy and adaptive skills. CLS may include the following services:

1. direct support services or self-help skills training for the performance of all the activities of daily living and self-care;

2. socialization skills training;

a. Repealed.

3. cognitive, communication tasks, and adaptive skills training; and

a. Repealed.

4. development of appropriate, positive behaviors.

a. - b. Repealed.

C. ...

D. Community Living Supports may be shared by up to three recipients who may or may not live together, and who have a common direct service provider. In order for CLS services to be shared, the following conditions must be met:

1. an agreement must be reached among all involved participants or their legal guardians regarding the provisions of shared CLS services;
2. the health and welfare of each participant must be assured through the provision of shared services;
3. services must be reflected in each participant's approved plan of care and based on an individual-by-individual determination; and
4. a shared rate must be billed.

E. - E.1. ...

2. Routine care and supervision that is normally provided by the participant's spouse or family, and services provided to a minor by the child's parent or step-parent, are not covered.

3. CLS services may not be furnished in a home that is not leased or owned by the participant or the participant's family.

4. Participants may not live in the same house as CLS staff.

5. Room and board or maintenance, upkeep and improvement of the individual's or family's residence is not covered.

6. Community Living Supports shall not be provided in a licensed respite care facility.

a. - d. Repealed.

7. Community Living Supports services are not available to individuals receiving the following services:

- a. Shared Living;
- b. Home Host; or
- c. Companion Care.

8. Community Living Supports cannot be billed or provided for during the same hours on the same day that the participant is receiving the following services:

- a. Day Habilitation;
- b. Prevocational;
- c. Supported Employment;
- d. respite-out of home services; or
- e. transportation-community access.

F. - F.1. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2443 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

### **§16305. Companion Care**

A. Companion Care services assist the recipient to achieve and/or maintain the outcomes of increased independence, productivity and inclusion in the community. These services are designed for individuals who live independently and can manage their own household with limited supports. The companion provides services in the participant's home and lives with the participant as a roommate. Companion Care services may be furnished

through self-direction or through a licensed provider agency as outlined in the participant's POC. This service includes:

1. providing assistance with all of the activities of daily living as indicated in the participant's POC; and
2. community integration and coordination of transportation services, including medical appointments.
3. Repealed.

B. Companion Care services can be arranged by licensed providers who hire companions, or services can be self-directed by the participant. The companion is a principal care provider who is at least 18 years of age who lives with the participant as a roommate and provides services in the participant's home.

1. - 2. Repealed.

### **C. Provider Responsibilities**

1. The provider organization shall develop a written agreement as part of the participant's POC which defines all of the shared responsibilities between the companion and the participant. The written agreement shall include, but is not limited to:

a. - c. ...

2. Revisions to this agreement must be facilitated by the provider and approved by the support team. Revisions may occur at the request of the participant, the companion, the provider or other support team members.

3. The provider is responsible for performing the following functions which are included in the daily rate:

- a. arranging the delivery of services and providing emergency services as needed;
- b. making an initial home inspection to the participant's home, as well as periodic home visits as required by the department;
- c. contacting the companion a minimum of once per week or as specified in the participant's POC; and
- d. providing 24-hour oversight and supervision of the Companion Care services, including back-up for the scheduled and unscheduled absences of the companion.

4. The provider shall facilitate a signed written agreement between the companion and the participant.

a. - b. Repealed.

### **D. Companion Responsibilities**

1. The companion is responsible for:
  - a. participating in and abiding by the POC;
  - b. ...
  - c. purchasing his/her own food and personal care items.

### **E. Service Limits**

1. The provider agency must provide relief staff for scheduled and unscheduled absences, available for up to 360 hours (15 days) as authorized by the POC. Relief staff for scheduled and unscheduled absences is included in the provider agency's rate.

### **F. Service Exclusions**

1. Companion Care is not available to individuals receiving the following services:

- a. Respite Care Service-Out of Home;
- b. Shared Living;
- c. Community Living Supports; or
- d. Host Home.

2. - 2.d. Repealed.

G. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2444 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

### **§16307. Day Habilitation Services**

A. Day Habilitation services are aimed at developing activities and/or skills acquisition to support or further community integration opportunities outside of an individual's home. These activities shall promote independence, autonomy and assist the participant with developing a full life in his community. The primary focus of Day Habilitation services is acquisition of new skills or maintenance of existing skills based on individualized preferences and goals.

1. The skill acquisition and maintenance activities should include formal strategies for teaching the individualized skills and include the intended outcome for the participant.

2. ...

3. As an individual develops new skills, training should progress along a continuum of habilitation services offered toward greater independence and self-reliance.

B. Day Habilitation services shall:

1. focus on enabling participants to attain maximum skills;

2. be coordinated with any physical, occupational or speech therapies included in the participant's POC;

3. - 4. ...

a. services are based on a one-half day unit of service and on time spent at the service site by the participant;

b. the one-half day unit of service requires a minimum of 2.5 hours;

c. two one-half day units may be billed if the participant spends a minimum of 5 hours at the service site;

d. any time less than 2.5 hours of services is not billable or payable; and

e. no rounding up of hours is allowed.

C. The provider is responsible for all transportation from the agency to all work sites related to the provision of service.

1. Transportation to and from the service site is offered and billable as a component of the Day Habilitation service; however, transportation is payable only when a Day Habilitation service is provided on the same day.

2. - 4.c.Repealed.

D. Participants may receive more than one type of vocational/habilitative service per day as long as the service and billing criteria are followed and as long as requirements for the minimum time spent on site are adhered to.

E. Service Exclusions

1. Time spent traveling to and from the day habilitation program site shall not be included in the calculation of the total number of day habilitation service hours provided per day.

a. Travel training for the purpose of teaching the participant to use transportation services may be included in

determining the total number of service hours provided per day, but only for the period of time specified in the POC.

2. Transportation-Community Access will not be used to transport ROW participants to any day habilitation services.

3. Day habilitation services cannot be billed or provided during the same hours on the same day as any of the following services:

a. Community Living Supports;

b. Professional services, except those direct contacts needed to develop a behavioral management plan or any other type of specialized assessment/plan; or

c. Respite Care Services—Out of Home.

F. Provider Qualifications. Providers must be licensed as an adult day care agency.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2445 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

### **§16309. Dental Services**

A. Dental services are available to adult participants over the age of 21 as a component of the ROW. Covered dental services include:

1. diagnostic services;

2. preventative services;

3. restorative services;

4. endodontic services;

5. periodontal services;

6. removable prosthodontics services;

7. maxillofacial prosthetics services;

8. fixed prosthodontics services;

9. oral and maxillofacial surgery

10. orthodontic services; and

11. adjunctive general services.

B. Service Exclusion. Participants must first access dental services covered under the Medicaid State Plan before utilizing dental services through the Residential Options Waiver.

C. Provider Qualifications. Providers must have a current, valid license to provide dental services from the Louisiana State Board of Examiners for Dentistry for the specific dental services in all specialty areas provided to the participant.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2445 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

### **§16311. Environmental Accessibility Adaptations**

A. Environmental Accessibility Adaptations are physical adaptations to the participant's home or vehicle which must be specified in the POC as necessary to enable the participant to integrate more fully into the community and to ensure his/her health, welfare and safety.

1. Reimbursement shall not be paid until receipt of written documentation that the job has been completed to the satisfaction of the participant.

B. Environmental adaptation services to the home and vehicle include the following:

1. assessments to determine the types of modifications that are needed;
2. training the participant and appropriate direct care staff in the use and maintenance of devices, controls, appliances and related items;
3. repair of all equipment and/or devices, including replacement of batteries and other items that contribute to the ongoing maintenance of the adaptation(s); and
4. all service contracts and warranties which the manufacturer includes in the purchase of the item.

C. In order to accommodate the medical equipment and supplies necessary to assure the welfare of the participant, home accessibility adaptations may include the following:

1. installation of ramps and grab-bars;
2. widening of doorways;
3. modification of bathroom facilities; or
4. installation of specialized electric and plumbing systems.

D. Home accessibility adaptations may be applied to rental or leased property only under the following conditions:

1. the participant is renting or leasing the property; and
2. written approval is obtained from the landlord and OCDD.

E. - F.4.g. ...

5. Home modifications shall not be paid for in the following residential services:

- a. Host Home; or
- b. Shared Living settings which are provider owned or leased.

G. Vehicle adaptations are modifications to an automobile or van that is the waiver participant's primary means of transportation in order to accommodate his/her special needs.

1. The modifications may include the installation of a lift or other adaptations to make the vehicle accessible to the participant or for him/her to drive.

2. Repealed.

H. Service Exclusions for Vehicle Adaptations

1. Payment will not be made to:
  - a. adapt vehicles that are owned or leased by paid caregivers or providers of waiver services; or
  - b. to purchase or lease a vehicle.
2. - 4. ...

I. Provider Responsibilities

1. The environmental accessibility adaptation(s) must be delivered, installed, operational and reimbursed in the POC year in which it was approved.

a. - b. Repealed.

2. A written itemized detailed bid, including drawings with the dimensions of the existing and proposed floor plans relating to the modifications, must be obtained and submitted for prior authorization.

a. Repealed.

3. Vehicle modifications must meet all applicable standards of manufacture, design and installation for all adaptations to the vehicle.

4. Upon completion of the work and prior to payment, the provider shall give the participant a certificate of warranty for all labor and installation and all warranty certificates from manufacturers.

J. Provider Qualifications. In order to participate in the Medicaid Program, providers must meet the following qualifications.

1. Providers of environmental accessibility adaptations for the home must be registered through the Louisiana State Licensing Board for Contractors as a home improvement contractor.

a. In addition, these providers must:

- i. meet the applicable state and/or local requirements governing their licensure or certification; and
- ii. comply with the applicable state and local building or housing code standards governing home modifications.

b. The individuals performing the actual service (building contractors, plumbers, electricians, carpenters, etc.) must also comply with the applicable state and/or local requirements governing individual licensure or certification.

2. Providers of environmental accessibility adaptations to vehicles must be licensed by the Louisiana Motor Vehicle Commission as a specialty vehicle dealer and accredited by the National Mobility Equipment Dealers Association under the Structural Vehicle Modifier category.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2446 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

### **§16313. Host Home**

A. Host Home services assist participants in meeting their basic adaptive living needs and offer direct support where required. Participants are afforded a welcoming, safe and nurturing family atmosphere in a family home environment in which the participant may receive supports, services and training in accordance with the POC. Host Home services take into account compatibility, including individual interests, age, needs for privacy, supervision and support needs. These services are provided in a private home by a contractor of the host home agency who lives in the home, and either rents or owns the residence. The contractor utilizes specific teaching strategies to encourage independence and autonomy when required as a part of the participant's POC.

1. Repealed.

B. Host Home services include:

1. assistance with the activities of daily living and adaptive living needs;
2. assistance to develop leisure interests and daily activities in the home setting;
3. assistance to develop relationships with other members of the household;
4. supports in accessing community services, activities and pursuing and developing recreational and social interests outside the home; and

5. teaching community living skills to achieve participant's goals concerning community and social life as well as to maintain contacts with biological families and natural supports.

C. Host Home provider agencies oversee and monitor the Host Home contractor to ensure the availability, quality, and continuity of services as specified in the ROW manual. Host Home provider agencies are responsible for the following functions:

1. arranging for a host home;
2. making an initial and periodic inspections of the host home; and
3. providing 24-hour oversight and supervision of Host Home services including providing emergency services and back-up for the scheduled and nonscheduled absences of the contractor;

a. Repealed.

D. Host Home contractors are responsible for:

1. assisting with the development of the participant's POC and complying with the provisions of the plan;
2. maintaining and providing data to assist in the evaluation of the participant's personal goals;
3. maintaining adequate records to substantiate service delivery and producing such records upon request;
4. undergoing any specialized training deemed necessary by the provider agency, or required by the department, to provide supports in the Host Home setting; and
5. immediately reporting to the department and applicable authorities any major issues or concerns related to the participant's safety and well-being.

6. - 10. Repealed.

E. ...

F. Host home contractors serving adults are required to be available for daily supervision, support needs or emergencies as outlined in the adult participant's POC based on medical, health and behavioral needs, age, capabilities and any special needs.

1. - I.1. ...

2. Separate payment will not be made for the following residential service models if the participant is receiving Host Home services:

a. - 3. ...

J. Provider Qualifications

1. All agencies must:
  - a. have experience in delivering therapeutic services to persons with developmental disabilities;
  - b. have staff who have experience working with persons with developmental disabilities;
  - c. screen, train, oversee and provide technical assistance to the Host Home contractors in accordance with OCDD requirements, including the coordination of an array of medical, behavioral and other professional services appropriate for persons with developmental disabilities; and
  - d. provide on-going assistance to the Host Home contractors so that all HCBS requirements are met.
2. Agencies serving children must be licensed by the Department of Social Services as a Class "A" Child Placing Agency.
3. Agencies serving adults must be licensed by the Department of Health and Hospitals as a provider of Substitute Family Care services.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2447 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

### **§16315. Intensive Community Supports**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2448 (November 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

### **§16317. Nursing Services**

A. Nursing services are medically necessary services ordered by a physician and provided by a licensed registered nurse or a licensed practical nurse within the scope of the State's Nurse Practice Act. Nursing services provided in the ROW are an extension of nursing services provided through the Home Health Program covered under the Medicaid State Plan.

1. The services require an individual nursing service plan and must be included in the plan of care.

2. The nurse must submit updates of any changes to the individual's needs and/or the physician's orders to the support coordinator every 60 days.

3. Repealed.

B. Nursing consulting services include assessments and health related training and education for participants and caregivers.

1. - 2. ...

3. The health related training and education service is the only nursing service which can be provided to more than one participant simultaneously. The cost of the service is allocated equally among all participants.

C. Service Requirement. Participants over the age of 21 years must first exhaust all available nursing visits provided under the Medicaid state plan prior to receiving services through the waiver program.

D. Provider Qualifications

1. In order to participate in the Medicaid Program, the provider agency must possess a current, valid license as a home health agency or, if under the ROW Shared Living Conversion Model, be an enrolled Shared Living Services agency with a current, valid license as a Supervised Independent Living agency.

E. Staffing Requirements

1. ...

2. The RN or the LPN must possess one year of service delivery experience to persons with developmental disabilities defined under the following criteria:

a. full-time experience gained in advanced and accredited training programs (i.e. masters or residency level training programs), which includes treatment services for persons with developmental disabilities;

b. paid, full-time nursing experience in specialized service/treatment settings for persons with developmental disabilities (i.e. intermediate care facilities for persons with developmental disabilities);



c. paid, full-time nursing experience in multi-disciplinary programs for persons with developmental disabilities (i.e. mental health treatment programs for persons with dual diagnosis – mental illness and developmental disabilities); or

d. paid, full-time nursing experience in specialized educational, vocational and therapeutic programs or settings for persons with developmental disabilities (i.e. school special education program).

3. Two years of part-time experience with a minimum of 20 hours per week may be substituted for one year of full-time experience.

4. The following activities do not qualify for the required experience:

a. volunteer nursing experience; or

b. experience gained by caring for a relative or friend with developmental disabilities.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2449 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

#### **§16319. One Time Transitional Services**

A. One Time Transitional Services are one-time, set-up services to assist individuals in making the transition from an ICF/DD to their own home or apartment in the community of their choice.

1. - 1.d.iii. Repealed.

B. Allowable transitional expenses may include:

1. nonrefundable security deposits that do not include rental payments;

2. set up fees for utilities;

3. essential furnishings to establish basic living arrangements, including:

a. bedroom and living room furniture;

b. table and chairs;

c. window blinds; and

d. food preparation items and eating utensils;

4. set-up/deposit fee for telephone service;

5. moving expenses; and

6. health and safety assurances including:

a. pest eradication; or

b. one-time cleaning prior to occupancy.

C. Service Limits

1. One time transitional expenses are capped at \$3,000 per person over a participant's lifetime.

D. Service Exclusions

1. One time transitional services may not be used to pay for:

a. housing, rent or refundable security deposits; or

b. furnishings or setting up living arrangements that are owned or leased by a waiver provider.

2. One time transitional services are not available to participants who are receiving Host Home services.

3. One time transitional services are not available to participants who are moving into a family member's home.

E. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2449 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

#### **§16321. Personal Emergency Response System (PERS)**

A. Personal Emergency Response System (PERS) is a system connected to the participant's telephone that incorporates an electronic device which enables the participant to secure help in an emergency. The device can be worn as a portable "help" button and when activated, a response center is contacted.

B. Participant Qualifications. PERS services are available to individuals who:

1. ...

2. are unable to use other communication systems due to experiencing difficulty in summoning emergency assistance; or

3. ...

C. PERS services includes rental of the electronic device, initial installation, training the participant to use the equipment, and monthly maintenance fees.

D. Service Exclusions

1. Separate payment will not be made for Shared Living Services.

E. Provider Qualifications

1. The provider must be authorized by the manufacturer to install and maintain equipment for personal emergency response systems.

2. The provider shall be in compliance with all applicable federal, state, and local regulations governing the operation of personal emergency response systems including staffing requirements for the response center.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2249 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

#### **§16323. Prevocational Services**

A. Prevocational Services are activities designed to assist participants in acquiring and maintaining basic work-related skills necessary to acquire and retain meaningful employment. Services should include real and simulated employment tasks to assist in determining their vocational potential. Overall goals include regular community inclusion and development of work skills and habits to improve the participant's employability. Services must be reflective of the participant's POC and focused toward habilitation rather than teaching a specific job skill.

1. - 2.b....

B. In the event participants are compensated while receiving prevocational services, the compensation must be in accordance with the United States Fair Labor Standards Act of 1985.

1. If participants are paid in excess of 50 percent of the minimum wage, the provider must, at a minimum:

a. - c. ...

C. The provider is responsible for all transportation from the agency to all vocational sites related to provision of services.

1. Travel training may be included in determining the number of hours of services provided per day for the period of time specified in the participant's POC.

a. Repealed.

D. Service Limits

1. Services shall be limited to no more than eight hours per day, five days per week.

2. Services are based on a one-half day unit of service and time spent at the service site by the participant.

a. the one-half day unit of service requires a minimum of 2.5 hours at the service site by the participant;

b. two one-half day units may be billed in one day if the participant spends a minimum of 5 hours at the service site;

c. any time less than 2.5 hours of service is not billable or payable; and

d. no rounding up of hours is allowed.

3. Participants may receive more than one vocational/habilitative service per day as long as the billing criteria are followed for each service and the requirements for the minimum time spent on site are adhered to.

a. - 5.a. Repealed.

E. Service Exclusions

1. Prevocational Services are not available to participants who are eligible to participate in programs funded under the Rehabilitation Act of 1973 or the Individuals with Disabilities Education Act.

2. Multiple vocational/habilitative services cannot be provided or billed for during the same hours on the same day as the following services:

a. Community Living Supports;

b. Professional Services, except those direct contacts needed to develop a behavioral management plan or other type of specialized assessment/plan; or

c. Respite Care Services—Out of Home.

3. Transportation to and from the service site is only payable when a vocational/habilitative service is provided on the same day.

4. Time spent in traveling to and from the prevocational program site shall not be included in the calculation of the total number of service hours provided per day.

a. During travel training, providers must not also bill for the transportation component as this is included in the rate for the number of service hours provided.

5. Transportation-Community Access shall not be used to transport ROW participants to any Prevocational Services.

F. Provider Qualifications. Providers must have a current, valid license as an adult day care center.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2450 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services

Financing and the Office for Citizens with Developmental Disabilities, LR 37:

### §16325. Professional Services

A. Professional Services are direct services to participants, based on need, that may be utilized to increase the individual's independence, participation and productivity in the home, work and community. Service intensity, frequency and duration will be determined by individual need. Professional services must be delivered with the participant present and in accordance with approved POC.

1. - 8.a. Repealed.

B. Professional services include the services provided by the following licensed professionals:

1. occupational therapist;

2. physical therapist;

3. speech therapist;

4. registered dietician;

5. social worker; and

6. psychologist.

C. Professional services may be utilized to:

1. perform assessments and/or re-assessments specific to professional disciplines to accomplish the desired outcomes for the participant and to provide recommendations, treatment, and follow-up;

a. - b. Repealed.

2. provide training or therapy to a participant and/or natural and formal supports necessary to either develop critical skills that may be self-managed by the participant or maintained according to the participant's needs;

3. intervene in and stabilize a crisis situation (behavioral or medical) that could result in the loss of home and community-based services, including the development, implementation, monitoring, and modification of behavioral support plans;

a. Repealed.

4. provide consultative services and recommendations;

5. provide necessary information to the participant, family, caregivers, and/or team to assist in planning and implementing services or treatment;

6. provide caregiver counseling for the participant's natural, adoptive, foster, or host family members in order to develop and maintain healthy, stable relationships among all caregivers, including family members, to support meeting the needs of the participant;

a. emphasis is placed on the acquisition of coping skills by building upon family strengths; and

b. services are intended to maximize the emotional and social adjustment and well-being of the individual, family, and caregiver; and

7. provide nutritional services, including dietary evaluation and consultation with individuals or their care provider.

a. Services are intended to maximize the individual's nutritional health.

NOTE: Psychologists and social workers will provide supports and services consistent with person-centered practices and Guidelines for Support Planning.

D. Service Exclusions

1. Professional services may only be furnished and reimbursed through ROW when the services are medically necessary, or have habilitative or remedial benefit to the participant.

a. Repealed.

2. Recipients who are participating in ROW and are up to the age of 21 must access these services through the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program

a. - d. Repealed.

E. Provider Qualifications

1. Enrollment of individual practitioners. Individual practitioners who enroll as providers of professional services must:

- a. have a current, valid license from the appropriate governing board of Louisiana for that profession; and
- b. possess one year of service delivery experience with persons with developmental disabilities;
- c. in addition, the specific service delivered must be consistent with the scope of the license held by the professional.

2. Provider agency enrollment of professional services.

a. The following provider agencies may enroll to provide professional services:

- i. a Medicare certified free-standing rehabilitation center;
  - ii. a licensed home health agency;
  - iii. a supervised independent living agency licensed by the department to provide shared living services;
- or
- iv. a substitute family care agency licensed by the department to provide host home services.

b. Enrolled provider agencies may provide professional services by one of the following methods:

- i. employing the professionals; or
- ii. contracting with the professionals.

c. Provider agencies are required to verify that all professionals employed by or contracted with their agency meet the same qualifications required for individual practitioners as stated in §16325.E.1.a-c.

3. All professionals delivering professional services must meet the required one year of service delivery experience as defined by the following:

a. full-time experience gained in advanced and accredited training programs (i.e. master's or residency level training programs), which includes treatment services for persons with developmental disabilities;

b. paid, full-time experience in specialized service/treatment settings for persons with developmental disabilities (i.e. ICFs/DD);

c. paid, full-time experience multi-disciplinary programs for persons with developmental disabilities (i.e. mental health treatment programs for persons with dual diagnosis – mental illness and developmental disability); or

d. paid, full-time experience in specialized educational, vocational, and therapeutic programs or settings for persons with developmental disabilities (i.e. school special education program);

e. two years of part-time experience with a minimum of 20 hours per week of the qualifying work experience activities may be substituted for one year of full-time experience.

4. The following activities do not qualify for the professional's required service delivery experience:

a. volunteer experience; or

b. experience gained by caring for a relative or friend with developmental disabilities.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2450 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

**§16327. Respite Care Services—Out of Home**

A. Respite Care Services—Out of Home are supports and services provided for the relief of those unpaid caregivers who normally provide care to participants who are unable to care for themselves. These services are furnished on a short-term basis in a licensed respite care center.

1. A licensed respite care facility shall insure that community activities are available to the participant in accordance with the approved POC, including transportation to and from these activities.

a. ...

2. While receiving respite care services, the participant's routine is maintained in order to attend school, school activities, or other community activities that he/she would typically participate in if not in the center-based respite facility.

B. Service Limits

1. Respite Care Services are limited to 720 hours per participant per POC year.

2. Requests for an extension of the service limit are subject to the department's established approval process and require proper justification and documentation.

C. Service Exclusions

1. ...

2. Respite Care Services-Out of Home may not be billed for participants receiving the following services:

- a. shared living;
- b. companion care; or
- c. host home;
- d. Repealed.

D. Provider Qualifications. The provider must possess a current, valid license as a respite care center issued by the department.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2451 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

**§16329. Shared Living Services**

A. Shared living services assist the participant in acquiring, retaining and improving the self-care, adaptive and leisure skills needed to reside successfully in a shared home setting within the community. Services are chosen by the participant and developed in accordance with his/her goals and wishes with regard to compatibility, interests, age and privacy in the shared living setting.

1. A Shared living services provider delivers supports which include:

- a. 24-hour staff availability;
- b. assistance with activities of daily living included in the participant's POC;

- c. a daily schedule;
- d. health and welfare needs;
- e. transportation;
- f. any non-residential ROW services delivered by the Shared Living services provider; and
- g. other responsibilities as required in each participant's POC.

2. - 3. Repealed.

B. An ICF/DD may elect to permanently relinquish its ICF/DD license and all of its Medicaid Facility Need Review approved beds from the total number of Certificate of Need (CON) beds for that home and convert it into a shared living waiver home or in combination with other ROW residential options as deemed appropriate in the approved conversion agreement.

1. In order to convert, provider request must be approved by the department and by OCDD.

2. ICF/DD residents who choose transition to a shared living waiver home must also agree to conversion of their residence.

3. If choosing ROW services, persons may select any ROW services and provider(s) based upon freedom of choice.

#### C. Shared Living Options

1. Shared Living Conversion Option. The shared living conversion option is only allowed for providers of homes which were previously licensed and Medicaid certified as an ICF/DD for up to a maximum of eight licensed and Medicaid-funded beds on October 1, 2009.

a. The number of participants for the shared living conversion option shall not exceed the licensed and Medicaid-funded bed capacity of the ICF/DD on October 1, 2009, or up to six individuals, whichever is less.

b. The ICF/DD used for the shared living conversion option must meet the department's operational, programming and quality assurances of health and safety for all participants.

c. The provider of shared living services is responsible for the overall assurances of health and safety for all participants.

d. The provider of shared living conversion option may provide nursing services and professional services to participants utilizing this residential services option.

2. Shared Living Non-Conversion (New) Option. The shared living non-conversion option is allowed only for new or existing ICF/DD providers to establish a shared living waiver home for up to a maximum of three individuals.

a. The shared living waiver home must be located separate and apart from any ICF/DD.

b. The shared living waiver home must be either a home owned or leased by the waiver participants or a home owned or leased and operated by a licensed shared living provider.

c. The shared living waiver home must meet department's operational, programming and quality assurances for home and community-based services.

d. The shared living provider is responsible for the overall assurances of health and safety for all participants.

#### D. Service Exclusions

1. ...

2. Payments shall not be made for environmental accessibility adaptations when the provider owns or leases the residence.

3. Participants may receive one-time transitional services only if the participant owns or leases the home and the service provider is not the owner or landlord of the home.

a. - d. Repealed.

4. MFP participants cannot participate in ROW shared living services which serve more than four persons in a single residence.

5. Transportation-Community Access services cannot be billed or provided for participants receiving shared living services, as this is a component of shared living services.

6. The following services are not available to participants receiving shared services:

- a. community living supports;
- b. respite care services;
- c. companion care;
- d. host home; or
- e. personal emergency response system.

E. Provider Qualifications. Providers must be approved by the department and have a current, valid license as a supervised independent living agency.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2452 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

#### §16331. Specialized Medical Equipment and Supplies

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2452 (November 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

#### §16333. Support Coordination

A. Support Coordination services are provided to all ROW participants to assist them in gaining access to needed waiver services, Medicaid state plan services, as well as needed medical, social, educational and other services, regardless of the funding source for the services. Support coordinators provide information and assistance to waiver participants by directing and managing their services in compliance with the rules and regulations governing case management services.

1. Support coordinators shall be responsible for ongoing monitoring of the provision of services included in the participant's approved POC.

2. Support coordinators shall also participate in the evaluation and re-evaluation of the participant's POC.

B. Support coordinators are responsible for providing assistance to participants who choose the self-direction option with their review of the Self-Direction Employer Handbook and for being available to these participants for

on-going support and help with carrying out their employer responsibilities.

C. Provider Qualifications. Providers must have a current, valid license as a case management agency and meet all other requirements for targeted case management services as set forth in LAC 50:XV.Chapter 105 and the Medicaid Targeted Case Management Manual.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2453 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

### **§16335. Supported Employment**

A. Supported Employment provides assistance in an integrated work setting to assist in the achievement and attainment of work related skills and includes on-going support to maintain employment.

1. - 3. Repealed.

B. Supported Employment services include:

1. ...

2. services that assist a participant to develop and operate a micro-enterprise;

a. This service consists of:

i. assisting the participant to identify potential business opportunities;

ii. ...

iii. identification of the supports that are necessary in order for the participant to operate the business; and

iv. ...

3. enclave services which is an employment situation in competitive employment in which a group of eight or fewer workers with disabilities are working at a particular work setting. The workers with disabilities may be disbursed throughout the company and among workers without disabilities or congregated as a group in one part of the business;

4. mobile work crews which is a group of eight or fewer workers with disabilities who perform work in a variety of locations under the supervision of a permanent employment specialist (job coach/supervisor); and

5. all transportation from the agency to all work sites related to provision of the service. The provider is responsible for furnishing the transportation.

C. Service Limits

1. The required minimum number of service hours per day per participant is as follows for:

a. individual placement services, the minimum is one hour;

b. services that assist a participant to develop and operate a micro-enterprise, the minimum is one hour;

c. an enclave, the minimum is 2.5 hours; and

d. a mobile work crew, the minimum is 2.5 hours.

2. Two half-day units may be billed if the participant spends a minimum of five hours at the service site.

3. Participants may receive more than one vocational or habilitative service per day as long as the service and billing requirements for each service are met.

4. Transportation to and from the service site is offered and billable as a component of the support employment service; however, transportation is payable only

when a supported employment service is provided on the same day.

D. Service Exclusions

1. ...

2. Any time less than one hour for individual placement and micro-enterprise is not billable or payable.

3. - 3.c....

4. Any time less than 2.5 hours for enclaves and mobile crews is not billable or payable.

5. ...

a. Travel training for the purpose of teaching the recipient how to use transportation services may be included in determining the total service numbers hours provided per day, but only for the period of time specified in the POC.

6. - 6.c....

7. Services are not available to individuals who are eligible to participate in programs funded under the Rehabilitation Act of 1973 or the Individuals with Disabilities Education Act.

8. No rounding up of hours is allowed.

E. Provider Qualifications. In order to enroll in the Medicaid Program, providers must have a compliance certificate from the Louisiana Rehabilitation Services as a Community Rehabilitation Program or a current, valid license as an Adult Day Care Center.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2453 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

### **§16337. Transportation-Community Access**

A. Transportation-community access services enable participants to gain access to waiver and other community services, activities and resources. These services are necessary to increase independence, productivity, community inclusion and to support self-directed employees benefits as outlined in the participant's POC. Transportation-community access services shall be offered as documented in the participant's approved POC.

1. The participant must be present to receive this service.

2. Whenever possible, the participant must utilize the following resources for transportation:

a. - b. ...

B. Service Limits

1. Community access trips are limited to three per day and must be arranged for geographic efficiency.

2. Greater than three trips per day require approval from the department or its designee.

a. Repealed.

C. Service Exclusions

1. Transportation services offered through ROW shall not replace the medical transportation services covered under the Medicaid state plan or transportation services provided as a means to get to and from school.

2. Separate payment will not be made for transportation-community access and the following services:

a. shared living services; or

b. community living services.

3. Transportation-community access will not be used to transport participants to day habilitation, pre-vocational, or supported employment services.

D. Provider Qualifications. Friends and family members who furnish Transportation-Community Access services to waiver participants must be enrolled as Medicaid Friends and Family Transportation providers.

1. In order to receive reimbursement for transporting Medicaid recipients to waiver services, family and friends must maintain:

- a. the state minimum automobile liability insurance coverage;
- b. a current state inspection sticker; and
- c. a current valid driver's license.

2. No special inspection by the Medicaid agency will be conducted.

a. - b. Repealed.

3. Documentation of compliance with the three listed requirements for this class of provider must be submitted when enrollment in the Medicaid agency is sought. Acceptable documentation shall be the signed statement of the individual enrolling for payment that all three requirements are met.

a. The statement must also have the signature of two witnesses.

4. Family and friends transportation providers are limited to transporting up to three specific waiver participants.

E. Vehicle Requirements. All vehicles utilized by for profit and non-profit transportation services providers for transporting waiver recipients must comply with all of the applicable state laws and regulations and are subject to inspection by the department or its designee.

1. - G. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2454 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

### **Chapter 165. Self-Direction Initiative**

#### **§16501. Self-Direction Service Option**

A. The self-direction initiative is a voluntary, self-determination option which allows the waiver participant to coordinate the delivery of designated ROW services through an individual direct support professional rather than through a licensed, enrolled provider agency. Selection of this option requires that the recipient utilize a payment mechanism approved by the department to manage the required fiscal functions that are usually handled by a provider agency.

B. Recipient Responsibilities. Waiver participants choosing the self-direction service option must understand the rights, risks and responsibilities of managing their own care and individual budget. If the participant is unable to make decisions independently, he must have an authorized representative who understands the rights, risks and responsibilities of managing his care and supports within his individual budget. Responsibilities of the participant or authorized representative include:

1. - 2. ...

a. Participants must adhere to the health and welfare safeguards identified by the support team, including:

i. ...

ii. compliance with the requirement that employees under this option must have criminal background checks prior to working with waiver participants;

3. ...

a. This annual budget is determined by the recommended service hours listed in the participant's POC to meet his needs.

b. The participant's individual budget includes a potential amount of dollars within which the participant, or his authorized representative, exercises decision-making responsibility concerning the selection of services and service providers.

C. Termination of Self-Direction Service Option. Termination of participation in the self-direction service option requires a revision of the POC, the elimination of the fiscal agent and the selection of the Medicaid-enrolled waiver service provider(s) of choice.

1. Voluntary termination. The waiver participant may choose at any time to withdraw from the self-direction service option and return to the traditional provider agency management of services.

2. Involuntary termination. The department may terminate the self-direction service option for a participant and require him to receive provider-managed services under the following circumstances:

a. the health or welfare of the participant is compromised by continued participation in the self-direction service option;

b. the participant is no longer able to direct his own care and there is no responsible representative to direct the care;

c. there is misuse of public funds by the participant or the authorized representative; or

d. over three payment cycles in the period of a year, the participant or authorized representative:

i. ...

ii. fails to follow the Personal Purchasing Plan and the POC;

iii. - D. ...

E. Relief coverage for scheduled or unscheduled absences, which are not classified as respite care services, can be covered by other participant-directed providers and the terms can be part of the agreement between the participant and the primary companion care provider.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2455 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

### **Chapter 167. Provider Participation**

#### **§16701. General Provisions**

A. ...

1. meet all of the requirements for licensure and the standards for participation in the Medicaid Program as a home and community-based services provider in accordance with state laws and the rules promulgated by the department;

2. comply with the regulations and requirements specified in LAC 50:XXI, Subparts 1 and 13 and the ROW provider manual;

3. comply with all of the state laws and regulations for conducting business in Louisiana, and when applicable, with the state requirements for designation as a non-profit organization; and

4. comply with all of the training requirements for providers of waiver services.

B. Providers must maintain adequate documentation to support service delivery and compliance with the approved POC and provide said documentation upon the department's request.

C. In order for a provider to bill for services, the waiver participant and the direct service worker or professional services practitioner rendering service must be present at the time the service is rendered.

1. Exception. The following services may be provided when the participant is not present:

a. - c. ...

2. All services must be documented in service notes which describe the services rendered and progress towards the participant's personal outcomes and his/her POC.

D. If transportation is provided as part of a waiver service, the provider must comply with all of the state laws and regulations applicable to vehicles and drivers.

E. All services rendered shall be prior approved and in accordance with the POC.

F. Providers, including direct care staff, cannot live in the same residence as the participant, except Host Home contractors and companion care workers.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2455 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

### **§16703. Staffing Restrictions and Requirements**

A. Payments shall not be made to persons who are legally responsible for the care of the waiver participants which include:

1. parents of minor children;

2. spouses for each other;

3. legal guardians for adults or children with developmental disabilities; or

4. parents for their adult child with developmental disabilities, regardless of the legal status of the adult child.

B. In order to receive payment, relatives must meet the criteria for the provision of the service and the same provider qualifications specified for the service as other providers not related to the participant.

1. Relatives must also comply with the following requirements:

a. become an employee of the participant's chosen waiver provider agency;

b. become a Medicaid enrolled provider agency; or

c. if the self-direction option is selected, relatives must:

i. become an employee of the self-direction participant; and

ii. have a Medicaid provider agreement executed by the fiscal agent as authorized by the Medicaid agency.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

### **Chapter 169. Reimbursement**

#### **§16901. Reimbursement Methodology**

A. Reimbursement for the following services shall be a prospective flat rate for each approved unit of service provided to the waiver participant. One quarter hour (15 minutes) is the standard unit of service, which covers both the service provision and administrative costs for these services:

1. - 3.e....

f. registered dietician;

4. Support Coordination; or

5. Supported Employment:

a. individual placement; and

b. micro-enterprise.

6. Repealed.

B. The following services are reimbursed at the cost of the adaptation device, equipment or supply item:

1. Environmental Accessibility Adaptations; and

a. Upon completion of the environmental accessibility adaptations and prior to submission of a claim for reimbursement, the provider shall give the participant a certificate of warranty for all labor and installation work and supply the participant with all manufacturers' warranty certificates.

2. Assistive Technology/Specialized Medical Equipment and Supplies.

3. Repealed.

C. The following services are reimbursed at a per diem rate:

1. ...

2. companion cares; and

3. shared living services;

a. Per diem rates are established based on the number of individuals sharing the living service module for both Shared Living Non-Conversion and Shared Living Conversion Services.

D. The following services are reimbursed at a per one-half-day unit of service based on a minimum of 2.5 hours spent on-site by the participant:

1. day habilitation;

2. pre-vocational; and

3. supported employment:

a. mobile crew; and

b. enclave.

E. ...

F. Nursing services are reimbursed at either an hourly or per visit rate for the allowable procedure codes.

G. ...

H. Transition expenses from an ICF/DD or nursing facility to a community living setting are reimbursed at the cost of the service(s) up to a lifetime maximum rate of \$3,000.

I. - J. ...

K. Effective for dates of service on or after August 1, 2010, the reimbursement for Residential Options Waiver

services shall be reduced by 2 percent of the rates in effect on July 31, 2010.

1. The following services shall be excluded from the rate reduction:

- a. personal emergency response services;
- b. environmental accessibility adaptation services;
- c. specialized medical equipment and supplies; and
- d. support coordination services.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2456 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

### **§16903. Direct Support Staff Wages**

A. In order to maximize staffing stability and minimize turnover among direct support staff, providers of the following services furnished under the Residential Options Waiver are required to pay direct support workers an hourly wage that is at least 29 percent (\$1.50) more than the federal minimum wage in effect as of July 23, 2007 or the current federal minimum wage, whichever is higher:

1. Community Living Supports;
2. Respite Services-Out of Home;
3. Shared Living;
4. Day Habilitation;
5. Prevocational services; and
6. Supported Employment.
7. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2456 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein  
Secretary

1108#062

## **DECLARATION OF EMERGENCY**

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

Inpatient Hospital Services  
Non-Rural, Non-State Hospitals  
Low Income and Needy Care Collaboration  
(LAC 50:V.953)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.953 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This

Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953.B(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for inpatient hospital services to reduce the reimbursement rates and to provide for a supplemental Medicaid payment to hospitals that enter into an agreement with a state or local governmental entity for the purpose of providing healthcare services to low income and needy patients (*Louisiana Register*, Volume 36, Number 11).

The department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for inpatient hospital services to revise the participation requirements for the Low Income and Needy Care Collaboration (*Louisiana Register*, Volume 37, Number 1). This Rule is being promulgated to continue the provisions of the January 1, 2011 Emergency Rule. This action is being taken to secure new federal funding and to promote the public health and welfare of Medicaid recipients by ensuring sufficient provider participation in the Hospital Services Program.

Effective August 31, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for inpatient hospital services.

## **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part V. Hospital Services**

##### **Subpart 1. Inpatient Hospitals**

#### **Chapter 9. Non-Rural, Non-State Hospitals**

##### **Subchapter B. Reimbursement Methodology**

#### **§953. Acute Care Hospitals**

A. - N.2.b. ...

3. Effective for dates of service on or after January 1, 2011, all parties that participate in supplemental payments under this Section, either as a qualifying hospital by receipt of supplemental payments or as a state or local governmental entity funding supplemental payments, must meet the following conditions during the period of their participation:

a. Each participant must comply with the prospective conditions of participation in the Louisiana Private Hospital Upper Payment Limit Supplemental Reimbursement Program.

b. A participating hospital may not make a cash or in-kind transfer to their affiliated governmental entity that has a direct or indirect relationship to Medicaid payments and would violate federal law.

c. A participating governmental entity may not condition the amount it funds the Medicaid Program on a specified or required minimum amount of low income and needy care.

d. A participating governmental entity may not assign any of its contractual or statutory obligations to an affiliated hospital.

e. A participating governmental entity may not recoup funds from an affiliated hospital that has not



adequately performed under the Low Income and Needy Care Collaboration Agreement.

f. A participating hospital may not return any of the supplemental payments it receives under this Section to the governmental entity that provides the non-federal share of the supplemental payments.

g. A participating governmental entity may not receive any portion of the supplemental payments made to a participating hospital under this Section.

4. Each participant must certify that it complies with the requirements of §953.N.3 by executing the appropriate certification form designated by the department for this purpose. The completed form must be submitted to the Department of Health and Hospitals, Bureau of Health Services Financing.

5. Each qualifying hospital must submit a copy of its Low Income and Needy Care Collaboration Agreement to the department.

6. The supplemental payments authorized in this Section shall not be considered as interim Medicaid inpatient payments in the determination of cost settlement amounts for inpatient hospital services rendered by children's specialty hospitals.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:876 (May 2008), amended LR 34:877 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895 (September 2009), amended LR 36:1552 (July 2010), LR 36:2561 (November 2010), LR 37:

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

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to all inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein  
Secretary

1108#063

## DECLARATION OF EMERGENCY

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

Inpatient Hospital Services  
Non-Rural, Non-State Public Hospitals  
Reimbursement Methodology  
(LAC 50:V.953)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V. 953 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This

Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

As a result of a budgetary shortfall in state fiscal year (SFY) 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for inpatient hospital services to reduce the reimbursement rates for inpatient hospital services rendered by non-rural, non-state hospitals (*Louisiana Register*, Volume 36, Number 11). The November 20, 2010 Rule also amended the reimbursement methodology for inpatient hospital services to establish a Medicaid upper payment limit financing mechanism to provide supplemental payments to hospitals for providing healthcare services to low income and needy patients.

The department promulgated an Emergency Rule which amended the provisions governing inpatient hospital services to revise the reimbursement methodology for non-rural, non-state public hospitals (*Louisiana Register*, Volume 37, Number 5). This Emergency Rule is being promulgated to continue the provisions of the May 15, 2010 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid recipients by ensuring sufficient provider participation in the hospital services program and to ensure recipient access to services.

Effective September 13, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for inpatient hospital services rendered by non-rural, non-state public hospitals.

## Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part V. Hospital Services

##### Subpart 1. Inpatient Hospital Services

#### Chapter 9. Non-Rural, Non-State Hospitals

##### Subchapter B. Reimbursement Methodology

#### §503. Acute Care Hospitals

A. - Q. ...

R. Effective for dates of service on or after May 15, 2011, non-rural, non-state public hospitals shall be reimbursed up to the Medicare inpatient upper payment limits as determined in accordance with 42 CFR §447.272.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:876 (May 2008), amended LR 34:877 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895 (September 2009), amended LR 36:1552(July 2010), LR 36:2561 (November, 2010), LR 37:

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

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for

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

Bruce D. Greenstein  
Secretary

1108#064

## DECLARATION OF EMERGENCY

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

#### Inpatient Hospital Services—State Hospitals Supplemental Payments (LAC 50:V.551)

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a Rule in June of 1983 that established the reimbursement methodology for inpatient services provided in acute care hospitals (*Louisiana Register*, Volume 9, Number 6). Inpatient hospital services were reimbursed in accordance with the Medicare reimbursement principles utilizing a target rate set based on the cost per discharge for each hospital, except that the base year to be used in determining the target rate was the fiscal year ending on September 29, 1982. In October 1984, the department established separate per diem limitations for neonatal and pediatric intensive care and burn units using the same base period as the target rate per discharge calculation (*Louisiana Register*, Volume 10, Number 10). In October 1992, the department promulgated a Rule which provided that inpatient hospital services to children under one year of age shall be reimbursed as pass-through costs and shall not be subject to per discharge or per diem limits applied to other inpatient hospital services (*Louisiana Register*, Volume 18, Number 10). The department subsequently amended the reimbursement methodology for inpatient hospital services to establish a prospective payment methodology for non-state hospitals (*Louisiana Register*, Volume 20, Number 6). The per discharge and per diem limitations in state acute care hospitals were rebased by a Rule promulgated in December of 2003 (*Louisiana Register*, Volume 29, Number 12). The Bureau subsequently amended the reimbursement methodology for inpatient services provided in state acute hospitals (*Louisiana Register*, Volume 32, Number 2).

The department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for inpatient hospital services to provide a supplemental Medicaid payment to state-owned acute care hospitals that meet the qualifying criteria, and to adjust the reimbursement paid to non-qualifying state-owned acute

care hospitals (*Louisiana Register*, Volume 36, Number 11). The department amended the provisions of the October 16, 2010 Emergency Rule in order to clarify the provisions governing the reimbursement methodology for those state-owned acute care hospitals that do not meet the qualifying criteria for the supplemental payment (*Louisiana Register*, Volume 37, Number 2). For the purpose of clarity, the January 20, 2011 Emergency Rule also incorporated the provisions of the February 20, 2006 Rule in a codified format for inclusion in the *Louisiana Administrative Code*. This Emergency Rule is being promulgated to continue the provisions of the January 20, 2011 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid recipients by ensuring sufficient provider participation and recipient access to services.

Effective September 19, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for inpatient hospital services rendered by state-owned acute care hospitals.

## Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part V. Hospital Services

##### Subpart 1. Inpatient Hospital Services

#### Chapter 5. State Hospitals

##### Subchapter B. Reimbursement Methodology

#### §551. Acute Care Hospitals

A. Inpatient hospital services rendered by state-owned acute care hospitals shall be reimbursed at allowable costs and shall not be subject to per discharge or per diem limits.

B. Effective for dates of service on or after October 16, 2010, a quarterly supplemental payment up to the Medicare upper payment limits will be issued to qualifying state-owned hospitals for inpatient acute care services rendered.

1. - 2. Repealed.

C. Qualifying Criteria for Supplemental Payment. The state-owned acute care hospitals must be located in DHH Administrative Region 8 (Monroe).

D. Effective for dates of service on or after October 16, 2010, Medicaid rates paid to state-owned acute care hospitals that do not meet the qualifying criteria for the supplemental payment shall be adjusted to 60 percent of allowable Medicaid costs.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

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

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein  
Secretary

1108#065

## DECLARATION OF EMERGENCY

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

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

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XIX.4329 and §§4334-4337 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

As a result of a budgetary shortfall in state fiscal year 2010, the Department of Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for laboratory and radiology services to reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 11). As a result of a budgetary shortfall in state fiscal year 2011, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for laboratory and radiology services to reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 8). The August 1, 2010 Emergency Rule also repealed the provisions governing the reimbursement for outpatient hospital laboratory services from this Chapter as these provisions have been amended and repromulgated in LAC 50:V.Chapter 57. The department promulgated an Emergency Rule which amended the provisions of the August 1, 2010 Emergency Rule to revise the formatting of LAC 50:XIX.4329 and §§4334-4337 as a result of the promulgation of the November 20, 2010 final Rule governing laboratory and radiology services (*Louisiana Register*, Volume 36, Number 11).

Due to a continuing budgetary shortfall, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for laboratory and radiology services to further reduce the reimbursement rates (*Louisiana Register*, Volume 37, Number 1). This Emergency Rule is being promulgated to continue the provisions of the January 1, 2011 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective August 31, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for

laboratory and radiology services to reduce the reimbursement rates.

### Title 50 PUBLIC HEALTH-MEDICAL ASSISTANCE Part XIX. Other Services Subpart 3. Laboratory and Radiology Chapter 43. Billing and Reimbursement Subchapter B. Reimbursement §4329. Laboratory Services (Physicians and Independent Laboratories)

A. - H. ...

I. Effective for dates of service on or after August 1, 2010, the reimbursement rates for laboratory services shall be reduced by 4.6 percent of the fee amounts on file as of July 31, 2010.

J. Effective for dates of service on or after January 1, 2011, the reimbursement rates for laboratory services shall be reduced by 2 percent of the fee amounts on file as of December 31, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1025 (May 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1897 (September 2009), LR 36:1248 (June 2010), LR 36:2563 (November 2010), LR 37:

### §4334. Radiology Services

A. - G. ...

H. Effective for dates of service on or after August 1, 2010, the reimbursement rates for radiology services shall be reduced by 4.6 percent of the fee amounts on file as of July 31, 2010.

I. Effective for dates of service on or after January 1, 2011, the reimbursement rates for radiology services shall be reduced by 2 percent of the fee amounts on file as of December 31, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1897 (September 2009), amended LR 36:1248 (June 2010), LR 36:2563 (November 2010), LR 37:

### §4335. Portable Radiology Services

A. - E. ...

F. Effective for dates of service on or after August 1, 2010, the reimbursement rates for portable radiology services shall be reduced by 4.6 percent of the fee amounts on file as of July 31, 2010.

G. Effective for dates of service on or after January 1, 2011, the reimbursement rates for portable radiology services shall be reduced by 2 percent of the fee amounts on file as of December 31, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 30:1026 (May 2004), amended LR 35:1898 (September 2009), amended LR 36:1248 (June 2010), LR 36:2563 (November 2010), LR 37:

### §4337. Radiation Therapy Centers

A. - E. ...

F. Effective for dates of service on or after August 1, 2010, the reimbursement rates for radiology services

provided by radiation therapy centers shall be reduced by 4.6 percent of the fee amounts on file as of July 31, 2010.

G. Effective for dates of service on or after January 1, 2011, the reimbursement rates for radiology services provided by radiation therapy centers shall be reduced by 2 percent of the fee amounts on file as of December 31, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1898 (September 2009), amended LR 36:1248 (June 2010), LR 36:2563 (November 2010), LR 37:

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

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein  
Secretary

1108#066

## DECLARATION OF EMERGENCY

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

Medical Transportation Program  
Emergency Ambulance Services  
Reimbursement Rate Reduction  
(LAC 50:XXVII.325 and 353)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XXVII.325 and §353 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

As a result of a budgetary shortfall in state fiscal year 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for emergency

medical transportation services to reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 11).

Due to a budgetary shortfall in state fiscal year 2011, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for emergency medical transportation services to further reduce the reimbursement rates (*Louisiana Register*, Volume 37, Number 1). This Emergency Rule is being promulgated to continue the provisions of the January 1, 2011 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective August 31, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for emergency medical transportation services to reduce the reimbursement rates.

## Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part XXVII. Medical Transportation Program

#### Chapter 3. Emergency Medical Transportation

#### Subchapter B. Ground Transportation

#### §325. Reimbursement

A. - G. ...

H. Effective for dates of service on or after January 1, 2011, the reimbursement rates for emergency ambulance transportation services shall be reduced by 2 percent of the rate on file as of December 31, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:878 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1248 (June 2010), amended LR 36:2564 (November 2010), LR 37:

#### Subchapter C. Aircraft Transportation

#### §353. Reimbursement

A. - E. ...

F. Effective for dates of service on or after January 1, 2011, the reimbursement rates for fixed winged and rotor winged emergency air ambulance services shall be reduced by 2 percent of the rate on file as of December 31, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:70 (January 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2594 (November 2010), amended LR 37:

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein  
Secretary

1108#067

# DECLARATION OF EMERGENCY

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

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

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

The Department of Health and Hospitals, Bureau of Health Services Financing provides reimbursement for emergency ambulance transportation services. The department promulgated an Emergency Rule which established supplemental payments for governmental ambulance providers who render emergency medical transportation services to low income and needy patients in the state of Louisiana (*Louisiana Register*, Volume 37, Number 6). The department promulgated an Emergency Rule which amended the provisions of the July 1, 2011 Emergency Rule to allow supplemental payments for all ambulance providers who render emergency medical transportation services to low income and needy patients (*Louisiana Register*, Volume 37, Number 7). This Emergency Rule is being promulgated to amend the July 20, 2011 Emergency Rule to allow supplemental payments to providers of air ambulance transportation services. This action is being taken to promote the health and welfare of Medicaid recipients by ensuring continued access to emergency ambulance services.

Effective August 20, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the July 20, 2011 Emergency Rule which amended provisions establishing supplemental payments for emergency medical transportation services rendered by ambulance providers.

### Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

### Part XXVII. Medical Transportation Program

### Chapter 3. Emergency Medical Transportation

### Subchapter B. Ground Transportation

### §327. Supplemental Payments for Ambulance Providers

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

B. Qualifying Criteria. In order to qualify for this supplemental payment, the ambulance provider must be affiliated with a statewide ambulance service district through a Low Income and Needy Care Transportation Agreement.

1. For purposes of these provisions, an ambulance provider is defined as a provider of emergency medical transportation.

2. For purposes of these provisions, a Low Income and Needy Care Transportation Agreement is a written agreement between an ambulance provider and a statewide ambulance service district to facilitate enhanced emergency transportation services to low income and needy patients.

C. Payment Methodology. Each qualifying ambulance provider may receive quarterly supplemental payments for emergency transportation services rendered to Medicaid recipients and the uninsured during the quarter. Quarterly payment distribution to a qualifying ambulance provider shall be based on a formula which may recognize and adjust payment amounts for differences such as governmental or non-governmental ownership, rural or urban primary service area, payer mix of patients served, amount of uninsured patients served, and other factors. Payments to each individual provider shall be limited to the difference between Medicaid payments for emergency transportation services provided by the provider and the amount of the provider's usual charges plus the difference between payments made by uninsured patients and the amount of the provider's usual charges. Billed charges and payments shall be based on a 12 consecutive month period for claims data selected by the department.

D. Calculation of Provider's Usual Charges. For purposes of this payment, usual charges, for the state fiscal year (SFY) beginning July 1, 2011 shall be calculated as follows:

1. An average of the following amounts shall be made:

- a. the amounts billed to cash paying patients;
- b. the amounts billed to patients covered by indemnity insurers with which the provider has no contractual arrangement; and
- c. fee-for-service rates it contractually agrees to accept from any payor, including any discounted fee-for-service rates negotiated with managed care plans.

2. Amounts not included in the average are:

- a. free of charge services provided to uninsured patients;
- b. charges to uninsured patients at a substantially reduced rate;
- c. capitated payments;
- d. rates offered under hybrid fee-for-service arrangements whereby more than 10 percent of the individual's or entity's maximum potential compensation could be paid in the form of a bonus or withheld payment; and
- e. fees set by Medicare, state health care programs, and other federal health care programs.

3. In the SFY beginning July 1, 2011, usual charges shall be determined by a study conducted by the department of ambulance providers' charges. For each SFY thereafter, each provider's usual charges shall be based, at the option of the department, on a recalculation of the provider's usual charges or on the previous year's usual charges increased by the Medicare Ambulance Inflation Factor.

4. The payment to each individual provider shall not exceed the amount under subparagraph 4.f below, which is calculated as follows.

a. The department shall identify qualifying ambulance providers that received reimbursement from Medicaid for emergency transportation services during the quarter.

b. For each qualifying ambulance provider described in 4.a, the department shall identify the emergency medical transportation services:

i. for which the qualifying ambulance provider was reimbursed by Medicaid; and

ii. for which the qualifying ambulance provider was not reimbursed because the patient was uninsured.

c. For each qualifying ambulance provider described in 4.a, the department shall calculate:

i. the reimbursement paid to the qualifying ambulance provider by Medicaid for the emergency medical transportation services identified under 4.b.i above; and

ii. the reimbursement paid to the qualifying ambulance provider by uninsured patients for the emergency medical transportation services identified under 4.b.ii above.

d. For each qualifying ambulance provider described in 4.a, the department shall calculate the qualifying ambulance provider's usual charges for each of the provider's services identified under 4.b.

e. For each qualifying ambulance provider described in 4.a, the department shall:

i. subtract an amount equal to the total reimbursement calculated for each of the Medicaid emergency medical transportation services under 4.c.i from an amount equal to the sum of charges calculated under 4.d for the services identified in 4.b.i; and

ii. subtract an amount equal to the total reimbursement calculated for each of the emergency medical transportation services under 4.c.ii from an amount equal to the sum of charges calculated under 4.d for the services identified in 4.b.ii.

f. For each Medicaid provider described in 4.a, the department shall calculate the sum of each of the amounts calculated for each emergency medical transportation service under 4.e.

E. Calculation of maximum state payments. Notwithstanding the maximum amount which can be paid to any provider in 4.f, the maximum amount which may be paid by the state during any year to all qualified providers shall not exceed the total of the amounts calculated in 4.e.i.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

### **Subchapter C. Air Transportation**

#### **§355. Supplemental Payments for Ambulance Providers**

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

B. Qualifying Criteria. In order to qualify for this supplemental payment, the ambulance provider must be affiliated with a statewide ambulance service district through a Low Income and Needy Care Transportation Agreement.

1. For purposes of these provisions, an ambulance provider is defined as a provider of emergency medical transportation.

2. For purposes of these provisions, a Low Income and Needy Care Transportation Agreement is a written agreement between an ambulance provider and a statewide ambulance service district to facilitate enhanced emergency transportation services to low income and needy patients.

C. Payment Methodology. Each qualifying ambulance provider may receive quarterly supplemental payments for emergency air transportation services rendered to Medicaid recipients and the uninsured during the quarter. Quarterly payment distribution to a qualifying ambulance provider shall be based on a formula which may recognize and adjust payment amounts for differences such as governmental or non-governmental ownership, rural or urban primary service area, payer mix of patients served, amount of uninsured patients served, and other factors. Payments to each individual provider shall be limited to the difference between Medicaid payments for emergency air transportation services provided by the provider and the amount of the provider's usual charges plus the difference between payments made by uninsured patients and the amount of the provider's usual charges. Billed charges and payments shall be based on a 12 consecutive month period for claims data selected by the department.

D. Calculation of Provider's Usual Charges. For purposes of this payment, usual charges, for the state fiscal year (SFY) beginning July 1, 2011 shall be calculated as follows:

1. An average of the following amounts shall be made:

a. the amounts billed to cash paying patients;

b. the amounts billed to patients covered by indemnity insurers with which the provider has no contractual arrangement; and

c. fee-for-service rates it contractually agrees to accept from any payor, including any discounted fee-for-service rates negotiated with managed care plans.

2. Amounts not included in the average are:

a. free of charge services provided to uninsured patients;

b. charges to uninsured patients at a substantially reduced rate;

c. capitated payments;

d. rates offered under hybrid fee-for-service arrangements whereby more than 10 percent of the individual's or entity's maximum potential compensation could be paid in the form of a bonus or withheld payment; and

e. fees set by Medicare, state health care programs, and other federal health care programs.

3. In the SFY beginning July 1, 2011, usual charges shall be determined by a study conducted by the department of ambulance providers' charges. For each SFY thereafter, each provider's usual charges shall be based, at the option of the department, on a recalculation of the provider's usual charges or on the previous year's usual charges increased by the Medicare Ambulance Inflation Factor.

4. The payment to each individual provider shall not exceed the amount under subparagraph 4.f below, which is calculated as follows.

a. The department shall identify qualifying ambulance providers that received reimbursement from

Medicaid for emergency transportation services during the quarter.

b. For each qualifying ambulance provider described in 4.a, the department shall identify the emergency medical transportation services:

i. for which the qualifying ambulance provider was reimbursed by Medicaid; and

ii. for which the qualifying ambulance provider was not reimbursed because the patient was uninsured.

c. For each qualifying ambulance provider described in 4.a, the department shall calculate:

i. the reimbursement paid to the qualifying ambulance provider by Medicaid for the emergency medical transportation services identified under 4.b.i above; and

ii. the reimbursement paid to the qualifying ambulance provider by uninsured patients for the emergency medical transportation services identified under 4.b.ii above.

d. For each qualifying ambulance provider described in 4.a, the department shall calculate the qualifying ambulance provider's usual charges for each of the provider's services identified under 4.b.

e. For each qualifying ambulance provider described in 4.a, the department shall:

i. subtract an amount equal to the total reimbursement calculated for each of the Medicaid emergency medical transportation services under 4.c.i from an amount equal to the sum of charges calculated under 4.d for the services identified in 4.b.i; and

ii. subtract an amount equal to the total reimbursement calculated for each of the emergency medical transportation services under 4.c.ii from an amount equal to the sum of charges calculated under 4.d for the services identified in 4.b.ii.

f. For each Medicaid provider described in 4.a, the department shall calculate the sum of each of the amounts calculated for each emergency medical transportation service under 4.e.

E. Calculation of maximum state payments. Notwithstanding the maximum amount which can be paid to any provider in 4.f, the maximum amount which may be paid by the state during any year to all qualified providers shall not exceed the total of the amounts calculated in 4.e.i.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

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

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein  
Secretary

1108#057

## DECLARATION OF EMERGENCY

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

Medical Transportation Program  
Non-Emergency Ambulance Services  
Reimbursement Rate Reduction  
(LAC 50:XXVII.571)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XXVII.571 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for non-emergency ambulance transportation services to reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 11).

Due to a budgetary shortfall in state fiscal year 2011, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for non-emergency ambulance transportation services to further reduce the reimbursement rates (*Louisiana Register*, Volume 37, Number 1). This Emergency Rule is being promulgated to continue the provisions of the January 1, 2011 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective August 31, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for non-emergency ambulance services to reduce the reimbursement rates.

#### Title 50

#### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part. XXVII. Medical Transportation Program

#### Chapter 5. Non-Emergency Medical Transportation

#### Subchapter D. Reimbursement

#### §571. Non-Emergency Ambulance Transportation

A. - D. ...

E. Effective for dates of service on or after January 1, 2011, the reimbursement rates for non-emergency ambulance transportation services shall be reduced by 2 percent of the rates in effect on December 30, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:462 (March 2007), LR 34:878 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2564 (November 2010), LR 37:

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein  
Secretary

1108#069

## DECLARATION OF EMERGENCY

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

Medical Transportation Program  
Non-Emergency Medical Transportation  
Reimbursement Rate Reduction  
(LAC 50:XXVII.573)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XXVII.573 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

As a result of a budgetary shortfall in state fiscal year 2011, the Department of Health and Hospitals, Bureau of Health of Health Services Financing amended the provisions governing the reimbursement methodology for non-emergency medical transportation services to reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 11). As a result of a budgetary shortfall in state fiscal year 2011, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for non-emergency medical transportation services to reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 8). The August 1,

2010 Emergency Rule was amended to revise the formatting of LAC 50:XXVII.573 as a result of the promulgation of the November 20, 2010 final Rule governing non-emergency medical transportation services (*Louisiana Register*, Volume 36, Number 11).

Due to a continuing budgetary shortfall, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for non-emergency medical transportation services to further reduce the reimbursement rate (*Louisiana Register*, Volume 37, Number 1). This Emergency Rule is being promulgated to continue the provisions of the January 1, 2011 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective August 31, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for non-emergency medical transportation services to reduce the reimbursement rates.

## Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part XXVII. Medical Transportation Program

#### Chapter 5. Non-Emergency Medical Transportation Subchapter D. Reimbursement

#### §573. Non-Emergency, Non-Ambulance Transportation

A. - C. ...

D. Effective for dates of service on or after August 1, 2010, the reimbursement rates for non-emergency, non-ambulance medical transportation services shall be reduced by 4.5 percent of the rates in effect on July 31, 2010.

1. Friends and family providers are excluded from the rate reduction.

E. Effective for dates of service on or after January 1, 2011, the reimbursement rates for non-emergency, non-ambulance medical transportation services shall be reduced by 2 percent of the rates in effect on December 31, 2010.

1. Friends and family providers are excluded from the rate reduction.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:879 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein  
Secretary

1108#068



**DECLARATION OF EMERGENCY**

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

Mental Health Rehabilitation Program  
Reimbursement Rate Reduction (LAC 50:XV.901)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XV.901 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for the Mental Health Rehabilitation (MHR) Program to reduce the reimbursement rates paid for mental health rehabilitation services (*Louisiana Register*, Volume 36, Number 11). As a result of a budgetary shortfall in state fiscal year 2011, the department promulgated an Emergency Rule which terminated the coverage of Parent/Family Intervention (Intensive) (PFII) services in the MHR Program and amended the provisions governing medical necessity for MHR services in order to establish continued treatment criteria (*Louisiana Register*, Volume 36, Number 8). Recipients receiving PFII services shall be transitioned to comparable services available in the MHR Program. The department promulgated an Emergency Rule which amended the provisions of the August 1, 2010 Emergency Rule to revise the formatting of LAC 50:XV.901 as a result of the promulgation of the November 20, 2010 final Rule governing mental health rehabilitation services.

Due to a continuing budgetary shortfall, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for mental health rehabilitation services to further reduce the reimbursement rates (*Louisiana Register*, Volume 37, Number 1). This Emergency Rule is being promulgated to continue the provisions of the January 1, 2011 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective August 31, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for mental health rehabilitation services.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part XV. Services for Special Populations**

**Subpart 1. Mental Health Rehabilitation**

**Chapter 9. Reimbursement**

**§901. Reimbursement Methodology**

A. - F. ...

G. Effective for dates of service on or after August 1, 2010, Medicaid reimbursement shall be terminated for parent/family intervention (intensive) services.

H. Effective for dates of service on or after January 1, 2011, the reimbursement rates for Mental Health Rehabilitation services shall be reduced by 3.3 percent of the rates on file as of December 31, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1091 (May 2005), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1899 (September 2009), amended LR 36:1249 (June 2010), LR 36:2564 (November 2010), LR:37

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

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein  
Secretary

1108#070

**DECLARATION OF EMERGENCY**

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

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

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XV.25701 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the

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

As a result of a budgetary shortfall in state fiscal year 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing multi-systemic therapy (MST) to reduce the reimbursement rates and to establish prior authorization requirements (*Louisiana Register*; Volume 36, Number 11). As a result of a budgetary shortfall in state fiscal year 2011, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for MST services to reduce the reimbursement rates (*Louisiana Register*; Volume 36, Number 8). The August 1, 2010 Emergency Rule was amended to revise the formatting of LAC 50:XV.25701 as a result of the promulgation of the November 20, 2010 final Rule governing MST services (*Louisiana Register*; Volume 36, Number 11).

Due to a continuing budgetary shortfall, the department promulgated an Emergency Rule which further reduced the reimbursement rates paid for MST services (*Louisiana Register*; Volume 37, Number 1). This Emergency Rule is being promulgated to continue the provisions of the January 1, 2011 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective August 31, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for multi-systemic therapy services to reduce the reimbursement rates.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part XV. Services for Special Populations**

#### **Subpart 17. Multi-Systemic Therapy**

#### **Chapter 257. Reimbursement**

#### **§25701. Reimbursement Methodology**

A. - C. ...

D. Effective for dates of service on or after August 1, 2010, the reimbursement rates for multi-systemic therapy services shall be reduced by 2.63 percent of the rates on file as of July 31, 2010.

E. Effective for dates of service on or after January 1, 2011, the reimbursement rates for multi-systemic therapy services shall be reduced by 3 percent of the rates on file as of December 31, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services financing, LR 35:247 (February 2009), amended LR 36:1250 (June 2010), LR 36:2565 (November 2010), LR 37:

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein  
Secretary

## **DECLARATION OF EMERGENCY**

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

Outpatient Hospital Services  
Non-Rural, Non-State Hospitals and  
Children's Specialty Hospitals  
Reimbursement Rate Reduction  
(LAC:V.5313, 5317, 5513, 5517,  
5713, 5719, 6115 and 6119)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.5313, §5317, §5513, §5517, §5713, §5719, §6115 and §6119 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

As a result of a budgetary shortfall in state fiscal year 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for outpatient hospital services to reduce the reimbursement rates paid to non-rural, non-state hospitals and children's specialty hospitals (*Louisiana Register*, Volume 36, Number 9). As a result of a budgetary shortfall in state fiscal year 2011, the department promulgated an Emergency Rule which amended the provisions governing outpatient hospital services to reduce the reimbursement rates paid to non-rural, non-state hospitals and children's specialty hospitals (*Louisiana Register*; Volume 36, Number 8). The August 1, 2010 Emergency Rule was amended to revise the formatting as a result of the promulgation of the September 20, 2010 final Rule governing outpatient hospital services (*Louisiana Register*; Volume 36, Number 11).

Due to a continuing budgetary shortfall, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for outpatient hospital services to further reduce the reimbursement rates paid to non-rural, non-state hospitals and children's specialty hospitals (*Louisiana Register*; Volume 37, Number 1). This Emergency Rule is being promulgated to continue the provisions of the January 1, 2011 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective August 31, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the

provisions governing the reimbursement methodology for outpatient hospital services to reduce the reimbursement rates.

## **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part V. Hospitals**

##### **Subpart 5. Outpatient Hospitals**

#### **Chapter 53. Outpatient Surgery**

##### **Subchapter B. Reimbursement Methodology**

###### **§5313. Non-Rural, Non-State Hospitals**

A. - D. ...

E. Effective for dates of service on or after August 1, 2010, the reimbursement paid to non-rural, non-state hospitals for outpatient surgery shall be reduced by 4.6 percent of the fee schedule on file as of July 31, 2010.

1. Small rural hospitals as defined in R.S. 40:1300.143 shall be exempted from this rate reduction.

F. Effective for dates of service on or after January 1, 2011, the reimbursement paid to non-rural, non-state hospitals for outpatient surgery shall be reduced by 2 percent of the fee schedule on file as of December 31, 2010.

1. Small rural hospitals as defined in R.S. 40:1300.143 shall be exempted from this rate reduction.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:1900 (September 2009), amended LR 36:1250 (June 2010), amended LR 36:1250 (June 2010), LR 36:2041 (September 2010), LR 37:

###### **§5317. Children's Specialty Hospitals**

A. - B.1. ...

C. Effective for dates of service on or after August 1, 2010, the reimbursement paid to children's specialty hospitals for outpatient surgery shall be reduced by 4.6 percent of the fee schedule on file as of July 31, 2010.

1. Final reimbursement shall be 87.91 percent of allowable cost as calculated through the cost report settlement process.

D. Effective for dates of service on or after January 1, 2011, the reimbursement paid to children's specialty hospitals for outpatient surgery shall be reduced by 2 percent of the fee schedule on file as of December 31, 2010.

1. Final reimbursement shall be 86.15 percent of allowable cost as calculated through the cost report settlement process.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2042 (September 2010), amended LR 37:

#### **Chapter 55. Clinic Services**

##### **Subchapter B. Reimbursement Methodology**

###### **§5513. Non-Rural, Non-State Hospitals**

A. - D. ...

E. Effective for dates of service on or after August 1, 2010, the reimbursement paid to non-rural, non-state hospitals for outpatient clinic services shall be reduced by 4.6 percent of the fee schedule on file as of July 31, 2010.

1. Small rural hospitals as defined in R.S. 40:1300.143 shall be exempted from this rate reduction.

F. Effective for dates of service on or after January 1, 2011, the reimbursement paid to non-rural, non-state

hospitals for outpatient clinic services shall be reduced by 2 percent of the fee schedule on file as of December 31, 2010.

1. Small rural hospitals as defined in R.S. 40:1300.143 shall be exempted from this rate reduction.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:1900 (September 2009), amended LR 36:1250 (June 2010), amended LR 36:1250 (June 2010), LR 36:2042 (September 2010), LR 37:

###### **§5517. Children's Specialty Hospitals**

A. - B. ...

C. Effective for dates of service on or after August 1, 2010, the reimbursement paid to children's specialty hospitals for outpatient hospital clinic services shall be reduced by 4.6 percent of the fee schedule on file as of July 31, 2010.

D. Effective for dates of service on or after January 1, 2011, the reimbursement paid to children's specialty hospitals for outpatient hospital clinic services shall be reduced by 2 percent of the fee schedule on file as of December 31, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2042 (September 2010), amended LR 37:

#### **Chapter 57. Laboratory Services**

##### **Subchapter B. Reimbursement Methodology**

###### **§5713. Non-Rural, Non-State Hospitals**

A. - D. ...

E. Effective for dates of service on or after August 1, 2010, the reimbursement paid to non-rural, non-state hospitals for outpatient laboratory services shall be reduced by 4.6 percent of the fee schedule on file as of July 31, 2010.

1. Small rural hospitals as defined in R.S. 40:1300.143 shall be exempted from this rate reduction.

F. Effective for dates of service on or after January 1, 2011, the reimbursement paid to non-rural, non-state hospitals for outpatient laboratory services shall be reduced by 2 percent of the fee schedule on file as of December 31, 2010.

1. Small rural hospitals as defined in R.S. 40:1300.143 shall be exempted from this rate reduction.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:1900 (September 2009), amended LR 36:1250 (June 2010), amended LR 36:1250 (June 2010), LR 36:2042 (September 2010), LR 37:

###### **§5719. Children's Specialty Hospitals**

A. - B. ...

C. Effective for dates of service on or after August 1, 2010, the reimbursement paid to non-rural, non-state hospitals for outpatient clinical diagnostic laboratory services shall be reduced by 4.6 percent of the fee schedule on file as of July 31, 2010.

D. Effective for dates of service on or after January 1, 2011, the reimbursement paid to non-rural, non-state hospitals for outpatient clinical diagnostic laboratory services shall be reduced by 2 percent of the fee schedule on file as of December 31, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2043 (September 2010), amended LR 37:

## **Chapter 61. Other Outpatient Hospital Services**

### **Subchapter B. Reimbursement Methodology**

#### **§6115. Non-Rural, Non-State Hospitals**

A. - D. ...

E. Effective for dates of service on or after August 1, 2010, the reimbursement paid to non-rural, non-state hospitals for outpatient hospital services other than clinical diagnostic laboratory services, outpatient surgeries, rehabilitation services and outpatient hospital facility fees shall be reduced by 4.6 percent of the rates effective as of July 31, 2010. Final reimbursement shall be at 71.13 percent of allowable cost through the cost settlement process.

1. Small rural hospitals as defined in R.S. 40:1300.143 shall be exempted from this rate reduction.

F. Effective for dates of service on or after January 1, 2011, the reimbursement paid to non-rural, non-state hospitals for outpatient hospital services other than clinical diagnostic laboratory services, outpatient surgeries, rehabilitation services and outpatient hospital facility fees shall be reduced by 2 percent of the rates effective as of December 31, 2010. Final reimbursement shall be at 69.71 percent of allowable cost through the cost settlement process.

1. Small rural hospitals as defined in R.S. 40:1300.143 shall be exempted from this rate reduction.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:1900 (September 2009), amended LR 36:1250 (June 2010), amended LR 36:1250 (June 2010), amended LR 36:2043 (September 2010), LR 37:

#### **§6119. Children's Specialty Hospitals**

A. - B.1. ...

C. Effective for dates of service on or after August 1, 2010, the reimbursement fees paid to children's specialty hospitals for outpatient hospital services other than rehabilitation services and outpatient hospital facility fees shall be reduced by 4.6 percent of the rates effective as of July 31, 2010.

1. Final reimbursement shall be 87.91 percent of allowable cost as calculated through the cost report settlement process.

D. Effective for dates of service on or after January 1, 2011, the reimbursement fees paid to children's specialty hospitals for outpatient hospital services other than rehabilitation services and outpatient hospital facility fees shall be reduced by 2 percent of the rates effective as of December 31, 2010.

1. Final reimbursement shall be 86.15 percent of allowable cost as calculated through the cost report settlement process.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2044 (September 2010), amended LR 37:

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

91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein  
Secretary

1108#072

## **DECLARATION OF EMERGENCY**

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

Pharmacy Benefits Management Program  
Medication Administration  
Influenza Vaccinations  
(LAC 50:XXIX.123, 991 and 993)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XXIX.123 and §991 and adopts §993 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the Pharmacy Benefits Management Program to allow payment for the administration of H1N1 vaccine by qualified Medicaid enrolled pharmacists (*Louisiana Register*, Volume 36, Number 8). The department promulgated an Emergency Rule which amended the provisions governing the Pharmacy Benefits Management Program to allow payment for the administration of the influenza vaccine for all Medicaid recipients, and to provide reimbursement for the cost of the influenza vaccine for Medicaid recipients 19 years of age and older (*Louisiana Register*, Volume 36, Number 12). This Emergency Rule is being promulgated to continue the provisions of the January 1, 2011 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid recipients by facilitating access to the influenza vaccine.

Effective August 31, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the Pharmacy Benefits Management Program to allow reimbursement for the influenza vaccine and administration of the vaccine.

### **Title 50**

## **PUBLIC HEALTH—MEDICAL ASSISTANCE**

### **Part XXIX. Pharmacy**

#### **Chapter 1. General Provisions**

#### **§123. Medication Administration**

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1783 (August 2010), amended LR 37:

## **Chapter 9. Methods of Payment**

### **Subchapter H. Vaccines**

#### **§991. Vaccine Administration Fees**

A. ...

B. Effective for dates of service on or after January 1, 2011, the reimbursement for administration of the influenza vaccine for all recipients shall be reimbursed at \$15.22 for subcutaneous or intramuscular injection, \$10.90 for nasal/oral administration or billed charges, whichever is the lesser amount. This fee includes counseling, when performed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1783 (August 2010), amended LR 37:

#### **§993. Vaccine Reimbursement**

A. Effective for dates of service on or after January 1, 2011, the influenza vaccine for recipients aged 19 and over shall be reimbursed at 90 percent of the 2009 Louisiana Medicare Average Sales Price (ASP) allowable or billed charges, whichever is the lesser amount.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to all inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein  
Secretary

1108#073

## **DECLARATION OF EMERGENCY**

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

#### **Pregnant Women Extended Services Dental Services—Reimbursement Rate Reduction (LAC 50:XV.16107)**

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XV.16107 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: “The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other

measures as permitted under federal law.” This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

As a result of a budgetary shortfall in state fiscal year 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for dental services to reduce the reimbursement rates for services rendered to Medicaid eligible pregnant women (*Louisiana Register*, Volume 36, Number 9).

As a result of a budgetary shortfall in state fiscal year 2011, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for dental services to reduce the reimbursement rates for services rendered to Medicaid eligible pregnant women (*Louisiana Register*, Volume 36, Number 8). The August 1, 2010 Emergency Rule was amended to revise the formatting of LAC 50:XV.16107 as a result of the promulgation of the September 20, 2010 final Rule governing the Pregnant Women Extended Services Dental Program (*Louisiana Register*, Volume 36, Number 11).

Due to a continuing budgetary shortfall, the department promulgated an Emergency Rule which further reduced the reimbursement rates for dental services rendered to Medicaid eligible pregnant women (*Louisiana Register*, Volume 37, Number 1). This Emergency Rule is being promulgated to continue the provisions of the January 1, 2011 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective August 31, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for dental services rendered to Medicaid eligible pregnant women.

## **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part XV. Services for Special Populations**

#### **Subpart 13. Pregnant Women Extended Services**

#### **Chapter 161. Dental Services**

#### **§16107. Reimbursement**

A. - D.3.q. ...

E. Effective for dates of service on or after August 1, 2010, the reimbursement fees for dental services provided to Medicaid eligible pregnant women shall be reduced to the following percentages of the 2009 National Dental Advisory Service Comprehensive Fee Report 70th percentile, unless otherwise stated in this Chapter:

1. 69 percent for the comprehensive periodontal evaluation exam;
2. 65 percent for the following diagnostic services:
  - a. intraoral-periapical first film;
  - b. intraoral-periapical, each additional film; and
  - c. panoramic film and prophylaxis, adult; and
3. 58 percent for the remaining diagnostic services and all periodontic procedures, restorative and oral and maxillofacial surgery procedures which includes the following dental services:
  - a. intraoral, occlusal film;

- b. bitewings, two films;
- c. amalgam (one, two or three surfaces) primary or permanent;
- d. amalgam (four or more surfaces);
- e. resin-based composite (one, two or three surfaces), anterior;
- f. resin-based composite (four or more surfaces) or involving incisal angle, anterior;
- g. resin-based composite crown, anterior;
- h. resin-based composite (one, two, three, four or more surfaces), posterior;
- i. prefabricated stainless steel crown, primary or permanent tooth;
- j. prefabricated resin crown;
- k. periodontal scaling and root planning (four or more teeth per quadrant);
- l. full mouth debridement to enable comprehensive evaluation and diagnosis;
- m. extraction, coronal remnants-deciduous tooth;
- n. extraction, erupted tooth or exposed root (elevation and/or forceps removal);
- o. surgical removal of erupted tooth requiring elevation of mucoperiosteal flap and removal of bone and/or section of tooth;
- p. removal of impacted tooth, soft tissue; and
- q. removal of impacted tooth, partially bony.

F. Effective for dates of service on or after January 1, 2011, the reimbursement fees for dental services provided to Medicaid eligible pregnant women shall be reduced to the following percentages of the 2009 National Dental Advisory Service Comprehensive Fee Report 70th percentile, unless otherwise stated in this Chapter:

1. 67.5 percent for the comprehensive periodontal evaluation exam;
2. 63.5 percent for the following diagnostic services:
  - a. intraoral-periapical first film;
  - b. intraoral-periapical, each additional film; and
  - c. panoramic film and prophylaxis, adult; and
3. 57 percent for the remaining diagnostic services and all periodontic procedures, restorative and oral and maxillofacial surgery procedures which includes the following dental services:
  - a. intraoral, occlusal film;
  - b. bitewings, two films;
  - c. amalgam (one, two or three surfaces) primary or permanent;
  - d. amalgam (four or more surfaces);
  - e. resin-based composite (one, two or three surfaces), anterior;
  - f. resin-based composite (four or more surfaces) or involving incisal angle, anterior;
  - g. resin-based composite crown, anterior;
  - h. resin-based composite (one, two, three, four or more surfaces), posterior;
  - i. prefabricated stainless steel crown, primary or permanent tooth;
  - j. prefabricated resin crown;
  - k. periodontal scaling and root planning (four or more teeth per quadrant);
  - l. full mouth debridement to enable comprehensive evaluation and diagnosis;
  - m. extraction, coronal remnants-deciduous tooth;

- n. extraction, erupted tooth or exposed root (elevation and/or forceps removal);
- o. surgical removal of erupted tooth requiring elevation of mucoperiosteal flap and removal of bone and/or section of tooth;
- p. removal of impacted tooth, soft tissue; and
- q. removal of impacted tooth, partially bony.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:434 (March 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1902 (September 2009), amended LR 36:2044 (September 2010), LR 37:

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein  
Secretary

1108#074

## DECLARATION OF EMERGENCY

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

#### 2011-12 Early Migratory Bird Seasons

In accordance with the emergency provisions of R.S. 49:953 of the Administrative Procedure Act, and under authority of R.S. 56:115, the Secretary of the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission hereby adopts the following Emergency Rule.

The hunting seasons for early migratory birds during the 2011-2012 hunting season shall be as follows:

Dove: The term "dove" refers to the following species, and only the following species: mourning doves, white-winged doves, Eurasian collared-doves, and ringed-turtle doves.

Dove South Zone:

September 3-September 11

October 15-November 27

December 17-January 2

Dove North Zone:

September 3-September 18

October 8-November 6

December 10-January 2

Bag Limit: Mourning and white-winged doves and fully dressed Eurasian collared- and ringed turtle-doves: Daily bag limit 15 in aggregate, Possession 30 in aggregate, but note: there is no bag limit on Eurasian collared-doves or ringed turtle-doves provided that a fully feathered wing and head remain attached to the carcass of the bird. Fully dressed Eurasian-collared doves and ringed-turtle doves (those without a fully feathered wing and head naturally attached to the carcass) shall be included in the aggregate bag.

Dove Hunting Zones: The state shall be divided into North and South Dove Hunting Zones by the following boundary: Beginning at the Texas-Louisiana border on La.

Highway 12; thence east along La. Highway 12 to its intersection with U.S. Highway 190; thence east along U.S. Highway 190 to its intersection with Interstate 12; thence east along Interstate 12 to its intersection with Interstate 10; thence east along Interstate 10 to the Mississippi state line.

Teal: September 10-September 25

Daily bag limit 4, possession limit 8, blue-winged, green-winged and Cinnamon teal only. Federal and state waterfowl stamps required.

Rails: Split Season, Statewide, 70 days

September 10-September 25

Remainder of season to be set in August with the duck regulations.

King and Clapper: Daily bag limit 15 in the aggregate and possession 30 in the aggregate.

Sora and Virginia: Daily and possession bag 25 in the aggregate.

Gallinules: Split Season, Statewide, 70 days

September 10-September 25

Remainder of season to be set in August with the duck regulations.

Common and Purple: Daily bag limit 15 in the aggregate, possession of 30 in the aggregate.

Woodcock: December 18-January 31, Statewide

Daily bag limit 3, possession limit 6.

Snipe: Deferred to be set in August with the duck regulations.

Extended Falconry Season

Mourning Doves: Statewide

September 19-October 4

Woodcock: Split Season, Statewide

October 27-December 16

February 1-February 11

Falconry daily bag and possession limits for all permitted migratory game birds must not exceed 3 and 6 birds, respectively, singly or in the aggregate, during the extended falconry seasons and regular hunting seasons. Remainder of extended falconry seasons for ducks, rails, gallinules to be set in August with the duck regulations.

Shooting and Hawking Hours:

Dove: One-half hour before sunrise to sunset except 12 noon to sunset on September 3, 2011.

Teal, rails, gallinules, and woodcock: One-half hour before sunrise to sunset.

A Declaration of Emergency is necessary because the U.S. Fish and Wildlife Service establishes the framework for all migratory species. In order for Louisiana to provide hunting opportunities to the 100,000 sportsmen, selection of season dates, bag limits, and shooting hours must be established and presented to the U.S. Fish and Wildlife Service immediately.

The aforementioned season dates, bag limits and shooting hours will become effective on September 1, 2011 and extend through sunset on February 28, 2012.

Robert J. Barham  
Secretary

1108#017

## DECLARATION OF EMERGENCY

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

#### 2011 Fall Inshore Shrimp Season Opening

In accordance with the emergency provisions of R.S. 49:953 of the Administrative Procedure Act which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons and R.S. 56:497 which provides that the Wildlife and Fisheries Commission shall fix no less than two open seasons each year for all or parts of state inside waters and shall have the authority to open or close state outside waters, the Wildlife and Fisheries Commission does hereby set the 2011 Fall Shrimp Season in inside waters to open as follows:

Shrimp Management Zone 1, that portion of Louisiana inside waters from the Mississippi-Louisiana state line to the eastern shore of South Pass of the Mississippi River, to open at 6 a.m. August 22, 2011, and

Shrimp Management Zone 2, that portion of state inside waters from the eastern shore of South Pass of the Mississippi River to the western shore of Vermilion Bay and Southwest Pass at Marsh Island, to open at 6 a.m. August 22, 2011, and

Shrimp Management Zone 3, that portion of state inside waters from the western shore of Vermilion Bay and Southwest Pass at Marsh Island to the Louisiana-Texas state line, to open at 6 a.m. August 22, 2011

The commission grants authority to the Secretary of the Department of Wildlife and Fisheries to close the fall shrimp season when biological and technical data indicate the need to do so or if enforcement problems develop and to close and reopen all or parts of state inside and outside waters if significant numbers of small white shrimp are found in these waters.

Stephen W. Sagera  
Chairman

1108#016

## DECLARATION OF EMERGENCY

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

#### Additional Spring Inshore Shrimp Season Closures

In accordance with the emergency provisions of R.S. 49:953 of the Administrative Procedure Act which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons and R.S. 56:497 which provides that the Wildlife and Fisheries Commission shall fix no less than two open seasons each year for all or part of inside waters and a Declaration of Emergency adopted by the Wildlife and Fisheries Commission on May 5, 2011 which authorized the Secretary of the Department of Wildlife and Fisheries to close the 2011 Spring Inshore

Shrimp Season in any portion of Louisiana's inside waters to protect small white shrimp if biological and technical data indicate the need to do so, or enforcement problems develop, the Secretary hereby declares:

The 2011 spring inshore shrimp season in Shrimp Management Zone 1 will close on July 18, 2011 at 6:00 a.m. except for the following waters:

Lake Pontchartrain, Rigolets Pass, Chef Menteur Pass, the Mississippi River Gulf Outlet (MRGO), that part of Lake Borgne seaward of a line extending one-half mile from the shoreline, and that portion of Mississippi Sound beginning at a point on the Louisiana-Mississippi Lateral Boundary at 30 degrees 09 minutes 39.6 seconds north latitude and 89 degrees 30 minutes 00.0 seconds west longitude; thence due south to a point at 30 degrees 05 minutes 00.0 seconds north latitude and 89 degrees 30 minutes 00.0 seconds west longitude; thence southeasterly to a point on the western shore of Three-Mile Pass at 30 degrees 03 minutes 00.0 seconds north latitude and 89 degrees 22 minutes 23.0 seconds west longitude; thence northeasterly to a point on Isle Au Pitre at 30 degrees 09 minutes 20.5 seconds north latitude and 89 degrees 11 minutes 15.5 seconds west longitude, which is a point on the double-rig line as described in R.S. 56:495.1(A)2; thence northerly along the double-rig line to a point on the Louisiana-Mississippi Lateral Boundary at 30 degrees 12 minutes 37.9056 seconds north latitude and 89 degrees 10 minutes 57.9725 seconds west longitude; thence westerly along the Louisiana-Mississippi Lateral Boundary to the point of beginning, and the open waters of Breton and Chandeleur Sounds as described by the double-rig line.

The 2011 spring inshore shrimp season in the following portions of Shrimp Management Zone 2 will close on July 18, 2011 at 6:00 a.m.:

Those inside waters south of 29 degrees 13 minutes 00 seconds north latitude from 90 degrees 18 minutes 00 seconds west longitude westward to 90 degrees 34 minutes 00 seconds west longitude, and those inside waters south of 29 degrees 06 minutes 00 seconds north latitude from 90 degrees 34 minutes 00 seconds west longitude westward to 90 degrees 46 minutes 00 seconds west longitude, and those inside waters south of 29 degrees 26 minutes 00 seconds north latitude from 89 degrees 50 minutes 30 seconds west longitude westward to the western shore of the Barataria Waterway.

The 2011 spring inshore shrimp season in Shrimp Management Zone 3 will close on July 18, 2011 at 6:00 a.m. except for the following waters:

That portion of the Calcasieu Ship Channel originating at a line between Channel Markers 85 and 86 southward to a point originating along the inside/outside shrimp line at Calcasieu Pass as described in R.S. 56:495(A) and including East Pass from its origin at the Calcasieu Ship Channel to the south end of Calcasieu Lake and West Pass from its origin at the Calcasieu Ship Channel to the south end of West Cove, and that portion of Cameron Parish west of Calcasieu Lake and the Calcasieu Ship Channel.

Those waters in Shrimp Management Zones 1 and 3 in which the spring inshore shrimp season has been extended, as well as all state outside waters seaward of the

Inside/Outside Shrimp Line will remain open to shrimping until further notice except for those areas closed to recreational and commercial fishing due to the Deepwater Horizon drilling rig accident.

The number, distribution and percentage of small juvenile white shrimp taken in biological samples have rapidly increased in recent weeks and these waters are being closed to protect these developing shrimp.

Robert J. Barham  
Secretary

1108#001

## **DECLARATION OF EMERGENCY**

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

#### **Large Coastal Shark Commercial Season Closure**

In accordance with the emergency provisions of R.S. 49:953, the Administrative Procedure Act, R.S. 49:967 which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons, R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish, and the authority given to the Secretary of the Department by the Commission in its rule LAC 76:VII.357.M.2 which allows the secretary authority to modify seasons to maintain consistency with the adjacent federal waters, and that such closure order shall close the season until the date projected for the re-opening of that fishery in the adjacent federal waters, the Secretary of the Department of Wildlife and Fisheries hereby declares:

Effective 11:30 p.m., July 17, 2011, the commercial fishery for Large Coastal Sharks in Louisiana waters, as described in LAC 76:VII.357.B.2, (great hammerhead, scalloped hammerhead, smooth hammerhead, nurse shark, blacktip shark, bull shark, lemon shark, sandbar shark, silky shark, spinner shark and tiger shark) will close and remain closed until further notice. This closure will not pertain to persons holding a Federal Shark Research Permit issued by NOAA Fisheries Service, when those persons are legally fishing under the regulations promulgated for that permit including that a NMFS-approved observer is aboard the vessel. Nothing herein shall preclude the legal harvest of Large Coastal Sharks by legally licensed recreational fishermen during the open season for recreational harvest. Effective with this closure, no person shall commercially harvest, possess, purchase, exchange, barter, trade, sell or attempt to purchase, exchange, barter, trade or sell large coastal sharks, whether taken from within or without Louisiana waters, except for a Federal Shark Research Permit holder, when legally operating under that Permit. Also effective with the closure, no person shall possess Large Coastal Sharks in excess of a daily bag limit whether taken from within or without Louisiana waters, which may only be in possession during the open recreational season. Nothing shall prohibit the possession or sale of fish legally



taken prior to the closure, or from Federal Shark Research Permit holders operating legally under that permit, provided that all commercial dealers possessing Large Coastal Sharks taken legally prior to the closure shall maintain appropriate records in accordance with R.S. 56:306.5 and R.S. 56:306.6.

The Secretary has been notified by NOAA Fisheries Service that the harvest of Large Coastal Sharks in the federal waters of the Gulf of Mexico will close at 11:30 p.m. local time on July 17, 2011, and will be closed until 30 days after promulgation of seasonal rules for the 2012 shark season. The commercial season for harvest of Large Coastal Shark in Louisiana waters will remain closed until the announcement is made of the seasons for the harvest of Large Coastal Sharks in federal waters off of Louisiana. Establishing this closure is necessary to ensure that compatible regulations are in effect, and to increase effectiveness of enforcement operations.

Robert J. Barham  
Secretary

1108#002

## **DECLARATION OF EMERGENCY**

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

#### **Shrimp Season Closure in Additional Portions of Zone 1**

In accordance with the emergency provisions of R.S. 49:953 of the Administrative Procedure Act which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons and R.S. 56:497 which provides that the Wildlife and Fisheries Commission shall fix no less than two open seasons each year for all or part of inside waters and a Declaration of Emergency adopted by the Wildlife and Fisheries Commission on May 5, 2011 which authorized the Secretary of the Department of Wildlife and Fisheries to close the 2011 Spring Inshore Shrimp Season in any portion of Louisiana's inside waters to protect small white shrimp if biological and technical data indicate the need to do so, or enforcement problems develop, the Secretary hereby declares:

The 2011 spring inshore shrimp season will close on August 2, 2011 at 6:00 a.m. in Shrimp Management Zone 1 except for that portion of Mississippi Sound beginning at a point on the Louisiana-Mississippi Lateral Boundary at 30 degrees 09 minutes 39.6 seconds north latitude and 89 degrees 30 minutes 00.0 seconds west longitude; thence due south to a point at 30 degrees 05 minutes 00.0 seconds north latitude and 89 degrees 30 minutes 00.0 seconds west longitude; thence southeasterly to a point on the western shore of Three-Mile Pass at 30 degrees 03 minutes 00.0 seconds north latitude and 89 degrees 22 minutes 23.0 seconds west longitude; thence northeasterly to a point on Isle Au Pitre at 30 degrees 09 minutes 20.5 seconds north latitude and 89 degrees 11 minutes 15.5 seconds west longitude, which is a point on the double-rig line as

described in R.S. 56:495.1(A)2; thence northerly along the double-rig line to a point on the Louisiana-Mississippi Lateral Boundary at 30 degrees 12 minutes 37.9056 seconds north latitude and 89 degrees 10 minutes 57.9725 seconds west longitude; thence westerly along the Louisiana-Mississippi Lateral Boundary to the point of beginning, and the open waters of Breton and Chandeleur Sounds as described by the double-rig line.

Those waters in Shrimp Management Zone 1 in which the spring inshore shrimp season has been extended, as well as all state outside waters seaward of the Inside/Outside Shrimp Line will remain open to shrimping until further notice except for those areas closed to recreational and commercial fishing due to the Deepwater Horizon drilling rig accident.

The number, distribution and percentage of small juvenile white shrimp taken in biological samples have rapidly increased in recent weeks and these waters are being closed to protect these developing shrimp.

Robert J. Barham  
Secretary

1108#006

## **DECLARATION OF EMERGENCY**

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

#### **Zone 3 Spring Inshore Shrimp Season Closure**

In accordance with the emergency provisions of R.S. 49:953 of the Administrative Procedure Act which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons and R.S. 56:497 which provides that the Wildlife and Fisheries Commission shall fix no less than two open seasons each year for all or part of inside waters and a Declaration of Emergency adopted by the Wildlife and Fisheries Commission on May 5, 2011 which authorized the Secretary of the Department of Wildlife and Fisheries to close the 2011 Spring Inshore Shrimp Season in any portion of Louisiana's inside waters to protect small white shrimp if biological and technical data indicate the need to do so, or enforcement problems develop, the Secretary hereby declares:

The 2011 spring inshore shrimp season will close on July 23, 2011 at 6:00 p.m. in that portion of Shrimp Management Zone 3 including the Calcasieu Ship Channel originating at a line between Channel Markers 85 and 86 southward to a point originating along the inside/outside shrimp line at Calcasieu Pass as described in R.S. 56:495(A) and including East Pass from its origin at the Calcasieu Ship Channel to the south end of Calcasieu Lake and West Pass from its origin at the Calcasieu Ship Channel to the south end of West Cove, and that portion of Cameron Parish west of Calcasieu Lake and the Calcasieu Ship Channel.

Those waters in Shrimp Management Zone 1 in which the spring inshore shrimp season has been extended, as well as all state outside waters seaward of the Inside/Outside Shrimp

Line will remain open to shrimping until further notice except for those areas closed to recreational and commercial fishing due to the Deepwater Horizon drilling rig accident.

The number, distribution and percentage of small juvenile white shrimp taken in biological samples have rapidly

increased in recent weeks and these waters are being closed to protect these developing shrimp.

Robert J. Barham  
Secretary

1108#004

# Rules

## RULE

### Department of Children and Family Services Division of Programs Economic Stability Section

#### Exempt Earned Income Tax Credit (EITC) Payments (LAC 67:III.1975)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Department of Children and Family Services (DCFS), has amended the *Louisiana Administrative Code* (LAC), Title 67, Part III, Subpart 3, Section 1975, Earned Income Tax Credit (EITC).

Pursuant to the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (Section 728, P.L. 111-312) enacted on December 17, 2010, the agency must exclude as income and as resources for a period of 12 months from the month received, Federal tax refunds received after December 31, 2009, in all Federal means-tested programs. In accordance with the Food and Nutrition Services (FNS) Supplemental Nutrition Assistance Program (SNAP) policy memo dated February 07, 2011, Section 1975 of Subpart 3, Chapter 19, Subchapter has been revised to disregard Earned Income Tax Credit (EITC) payments as a resource for a period of 12 months from the date of receipt.

Action is required in this matter in order to avoid sanctions and penalties from the United States (R.S. 49:953(B)). If the agency does not follow the federal law regarding excluding federal tax refunds, the department may be subject to sanctions and penalties. This action was made effective by an Emergency Rule dated April 10, 2011.

#### Title 67

#### SOCIAL SERVICES

#### Part III. Economic Stability

#### Subpart 3. Supplemental Nutrition Assistance Program (SNAP)

#### Chapter 19. Certification and Eligible Households

#### Subchapter I. Income and Deductions

#### §1975. Earned Income Tax Credits (EITC)

A. Exclude EITC as resources for 12 months from receipt.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.9 and P.L. 103-66, P.L. 110-246, Section 728 P.L. 111-312.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Eligibility Determinations, LR 15:393 (May 1989), amended by the Department of Social Services, Office of Family Support, LR 21:188 (February 1995), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2530 (November 2010), amended by the Department of Children and Family Services, Division of Programs, Economic Stability Section, LR 37:2368 (August 2011).

Ruth Johnson  
Secretary

1108#056

## RULE

### Department of Economic Development Office of Business Development

#### Enterprise Zone Program (LAC 13:I.Chapter 7)

Editor's Note: This Rule is being printed in its entirety to correct an error upon submission. The original Rule may be viewed in the January 20, 2011 edition of the *Louisiana Register* on pages 296-304. The effective date of this Rule is August 20, 2011.

The Department of Economic Development, Office of Business Development, as authorized by and pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., hereby repeals Section 705, and amends and reenacts Sections 701 through 703 and Sections 707 through 749 of the Enterprise Zone Program as LAC 13:I.Chapter 7.

#### Title 13

#### ECONOMIC DEVELOPMENT

#### Part I. Financial Incentive Programs

#### Chapter 7. Enterprise Zone Program

#### §701. Scope and Qualifications

A. Intent of Program. The intent of the program is to stimulate employment for residents in depressed areas of the state that are designated as enterprise zones by providing tax incentives to a business hiring from these areas.

B. Description of Program. The Louisiana Enterprise Zone Program is a jobs program that gives tax incentives to a business hiring from certain specified targeted groups of individuals. Enterprise Zone Program incentives are in addition to other state-sponsored incentives such as the Industrial Tax Exemption Program and the Restoration Tax Abatement Program. Enterprise Zone and Quality Jobs Programs are mutually exclusive.

C. Incentives. The following incentives are available:

1. a one-time tax credit of \$2,500 for each net new job;
2. in lieu of the §701.C.1 tax credit, a one-time tax credit of \$5,000 for each net new job for the following businesses:
  - a. aviation and aerospace industries as defined in the NAICS industries 336411, 336412, 336413 or 332912;
  - b. the rubber manufacturing industry as defined in the NAICS industry 326211 (until June 30, 2012); or
  - c. auto parts manufacturers as defined in the NAICS industry group 3363 (until June 30, 2009);
3. in addition to the §701.C.1 and §701.C.2 tax credits, a one-time tax credit of \$2,500 for each recipient of Temporary Assistance for Needy Families (TANF) hired by a business. The TANF recipient must receive compensation which will disqualify them from continued participation in TANF and must be employed for two years to generate the additional tax credit. An employer shall not obtain the jobs tax credit for more than 10 TANF employees in the first year of participation in the program;

4. rebates of sales and use taxes imposed by the state, and sales and use taxes imposed by its political subdivisions upon approval of the governing authority of the appropriate taxing political subdivision, on all eligible purchases during a specified project period of not more than 30 months:

a. sales and use taxes imposed by a political subdivision which are dedicated to the repayment of bonded indebtedness or dedicated to schools shall not be eligible for rebate;

b. a business seeking a local sales and use tax rebate must obtain an endorsement resolution specific to the project from each political subdivision levying the taxes to be rebated. The endorsement resolution must clearly state the intention to rebate sales and use taxes as allowable for the project. The endorsement resolution must be adopted prior to board approval of the application, or if the project cost is greater than one hundred million dollars, prior to the project ending date;

5. in lieu of the §701.C.4 rebates, a refundable investment tax credit equal to one and one-half percent of the amount of qualified expenditures for assets that are located at the project site and are placed in service during the project period.

D. The §701.C.1, §701.C.2, and §701.C.3 tax credits may be used to satisfy state income tax and franchise tax liabilities, and may be taken on the tax return for the year in which the credit was created, or it may be taken on the tax return for a future year. If the entire tax credit cannot be used in the year created, the remainder may be applied against state income tax and franchise tax liabilities for the succeeding 10 years from the year in which the credit was created or until the entire credit is used, whichever occurs first.

#### E. Qualifications

1.a To qualify for the Enterprise Zone Program, a business must create permanent full-time net new jobs that are at least equal to the lesser of:

i. five jobs, created within the first two years of the contract period; or

ii. the number of jobs equal to a minimum of ten percent of the employees employed throughout the United States by the business and its affiliates, a minimum of one, created within the first year of the contract period.

b. For good cause shown, the board may grant an extension of not more than two years to comply with the above job creation requirements.

2. For projects with advance notifications filed with Business Incentives Services prior to the effective date of the 2010 revision of these rules, qualification will be determined in accordance with prior policy and practice.

3. Residential developments, (including but not limited to the construction, selling, or leasing of single-family or multi-family dwellings, apartment buildings, condominiums, town houses, etc.), churches, and businesses with gaming on site (see LAC 13:I.Chapter 3, Gaming Ineligibility) are not eligible for enterprise zone benefits.

4. For a multi-tenant facility to be eligible for the benefits of this Chapter, the business must meet one of the following criteria:

a. occupy a minimum of 33 percent of the total floor area of the building;

b. tenants are businesses new to the state;

c. tenants are Louisiana businesses increasing their number of locations within the state by placing a new location within this facility;

d. tenants are relocating within Louisiana and will generate the minimum of new job credits over and above the total jobs at their previous location.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 17:252 (March 1991), amended by Department of Economic Development, Office of Commerce and Industry, LR 22:446 (June 1996), amended by the Department of Economic Development, Office of Business Development, LR 29:2298 (November 2003), LR 37:2368 (August 2011).

### §703. Definitions

#### *Affiliate*—

1. any business entity that is:

a. controlled by the business;

b. a controlling owner of the business; or

c. controlled by an entity described in Subparagraph a or b.

2. *Control*, for purposes of this definition, means owning either directly or indirectly through control of or by another business entity:

a. a majority of the voting stock or other voting interest of such business entity or the business; or

b. stock or other interest whose value is a majority of the total value of such business entity or the business.

3. A controlled or controlling business entity will be deemed a “non-affiliate” (not an *affiliate*) if LED determines that neither the business nor any of its controlling owners exercise authority over the management, business policies and operations of the business entity.

4. A controlled or controlling business entity will be deemed an “unrelated affiliate” (not an *affiliate*) if LED determines that the business entity is not engaged in any line of business related to the project activities.

#### *Beginning of the Project*—

1. the first day on which project foundations are started or where foundations are unnecessary, the first day on which installation of the project facility begins or the first day that materials or equipment purchased for the project are received;

2. where there is no construction, installation, or purchase of materials or equipment, the first day on which a new hire is made in connection with the project; or

3. the beginning date reported on the application (which date must be on or after the date the advance notification was filed).

#### *Board*—the Board of Commerce and Industry.

*Business*—a legal entity applying for the Enterprise Zone Program that conducts any activity carried on for the production of income from selling goods or performing services. A business may be conducted in the form of either a for-profit or not-for-profit entity. A not-for-profit entity will be considered a business only if it provides goods or services for a fee based upon the cost of providing those goods or services (for example, hospitals).

*Business Incentives Services*—the Business Incentive Services Division of the Office of Business Development of the department.

*Contract Effective Date*—the day that the advance notification and fee were received by Business Incentives Services or the beginning of the project shown on the application. The contract effective date cannot be earlier than the date the advance notification was received by Business Incentive Services unless a waiver of timely filing has been approved by the board.

*Department*—Louisiana Department of Economic Development.

*Department of Revenue*—Louisiana Department of Revenue.

*Domicile*—the place of a person's principal establishment or habitual residence. A change of domicile may be shown by positive and satisfactory proof of establishment of domicile as a matter of fact with the intention of remaining in the new place and of abandoning the former domicile. Such proof may include a sworn declaration of intent recorded in the parish to which a person intends to move, voter registration, or similar evidence of such intent.

*Economic Development Zone*—

1. a contiguous geographic area with a visible boundary, owned or operated by a political subdivision or an entity created by a political subdivision for commercial or industrial development purposes, including but not limited to the following:

- a. industrial park;
- b. business park;
- c. airport or air park;
- d. research park;
- e. research and development park;
- f. downtown development district with taxing and bonding authority;
- g. former federal facility (immediately prior owner and occupant must have been a federal governmental entity), excluding a single building or small grouping of buildings; or
- h. port.

2. An Economic Development Zone must be designated as such by the political subdivision in which it is located, and approved by the board. The location of an Economic Development Zone once defined is permanent, and cannot be moved or relocated.

*Employment Baseline*—

1. the baseline from which net new jobs are determined, equal to:

a. the median number of full time employees and part time employees of the business (including employees of affiliates, and employees of unrelated affiliates who have also been employed by the business within the 12 months prior to the contract effective date) at the project site, during the payroll periods including the twelfth day of the month, in the last four months completed prior to the contract effective date (the median is calculated by discarding the months with the highest and lowest number of employees, and averaging the number in the remaining two months); or

b. the last annual average number of full time employees and part time employees certified under an enterprise zone contract for the business that was in effect on the day prior to the contract effective date.

2. The baseline must be maintained in any year for which the business requests job tax credits.

3. For projects with advance notifications filed with Business Incentives Services prior to the effective date of the 2010 revision of these rules, employment baseline will be determined in accordance with prior policy and practice.

*Enterprise Zone*—a census block group which is economically distressed and in need of expansion of business and industry and the creation of jobs, and designated by the Board to be eligible for the benefits of this Chapter in accordance with R.S. 51:1784.

*Full Time Employee*—an employee who is reported on the business's quarterly report and is scheduled to work 35 hours per week.

*Headquarters*—the corporate domicile of the company, together with all executive and administrative jobs normally constituting a corporate headquarters, or the regional headquarters support services of the company, together with all executive and administrative jobs normally constituting a regional corporate headquarters.

*Hire Date*—the first day of work for which the business directly pays an employee.

*Lacking Basic Skills*—an employee who exhibits below a ninth grade level proficiency in reading or writing or math.

*Louisiana Workforce Commission*—formerly known as the Louisiana Department of Labor.

*NAICS*—North American Industrial Classification System.

*Net New Job*—

1. a position of employment that is:
  - a. created on or after the contract effective date;
  - b. in addition to the number of jobs in the employment baseline;
  - c. based at the site of the enterprise zone project;
  - d. filled by a full time employee or part time employee; who is
  - e. a United States citizen domiciled in Louisiana, or who becomes domiciled in Louisiana within 60 days after hire date; and who is
  - f. reported on the business's quarterly report.

2. The number of net new jobs filled by full time employees shall be determined by averaging the monthly totals of full time employees over a minimum of seven months for the first and last year of the contract period, and over a 12 month period for all other years. The number of net new jobs filled by part time employees shall be determined by counting the number of employees qualifying as part time employees during the applicable period.

3. For purposes of determining qualification of the business for the Enterprise Zone Program under §701.E, net new jobs shall be limited to permanent full-time jobs that are in addition to the number of permanent full-time jobs included in the employment baseline.

4. Jobs in which employees perform essentially the same work at the same location both before and after the contract effective date are not net new jobs unless:

- a. there has been an arm's length transfer of ownership between unrelated companies (not affiliates); and
- b. either the location has been out of operation for at least three months, or the secretary determines that the jobs would have likely been lost to the state absent the transfer.

5.a Transferred jobs which are not net new jobs include:

i. jobs transferred, or jobs associated with work or sales transferred to the project site from other Louisiana sites of the business (including affiliates), unless back-filled at the original site;

ii. jobs transferred, or jobs associated with work or sales transferred, to the business from affiliates and unrelated affiliates on the project site, unless back-filled;

iii. jobs transferred, or jobs associated with work or sales transferred, to the project site from other Louisiana sites as a result of the business (including affiliates) acquiring a business operation, or substantially all of its assets, and continuing the business operation;

b. jobs created for the project, but temporarily assigned to another site until the site is ready or for training or similar purposes, are not considered transferred jobs and may be considered net new jobs when re-assigned to the project site.

6. Lost jobs which must be deducted in determining net new jobs include:

a. jobs lost due to closure of any site of the business (including affiliates) that:

i. is located within the same parish; and

ii. provides the same goods or services as the project site;

b. jobs lost due to downsizing of any site of the business (including affiliates) that:

i. is located within the same parish; and

ii. provides the same goods or services as the project site;

iii. the project site and the other site each sell their goods or services primarily into that parish; and

iv. the downsizing was anticipated by the business at the time the Qualification Certification was filed;

c. jobs lost due to closure or downsizing of any site of the business (including affiliates) that:

i. is located in the state of Louisiana; and

ii. provides the same goods or services;

iii. primarily for the same market segment or customer base, as the project site; and

iv. the closure or downsizing was anticipated by the business at the time the Qualification Certification was filed;

d. jobs lost by the business (including affiliates) due to relocation outside Louisiana or downsizing of headquarters operations or headquarters support services of the business (including any intermediate or ultimate parent company), and the relocation or downsizing was anticipated by the business at the time the Qualification Certification was filed.

*Part Time Employee*—an employee who is reported on the business's quarterly report and works a minimum of 20 hours each week for at least 26 consecutive weeks during the taxable year.

*Permanent Job*—as established in the qualification certification (as of the time the qualification certification is filed and irrespective of subsequent modifications to the job), a job that has no anticipated end date falling within the period commencing 45 days prior to the contract effective date and ending five years after the contract effective date.

*Placed in Service*—the date indicated as *placed in service* on the business's federal tax return depreciation schedule.

*Political Subdivision*—in this Chapter, a state, parish, municipality or other political subdivisions, including and not limited to a law enforcement or other special district authorized by law to perform governmental functions.

*Project*—a construction, expansion, or other business venture and associated activities for which benefits are sought under the Enterprise Zone Program.

*Project Completion Report*—a report confirming the beginning of the project, the project ending date, and the benefits elected.

*Project Ending Date*—the date all construction and purchasing is completed and received for the project, completing the project.

*Project Period*—the time encompassed by the contract effective date and the project ending date.

*Project Site*—the contiguous physical location of a project.

*Qualified Expenditure*—amounts classified as capital expenditures for federal income tax purposes plus exclusions from capitalization provided for in Internal Revenue Code Section 263(a)(1)(A) through (L), minus the capitalized cost of land, capitalized leases of land, capitalized interest, capitalized costs of manufacturing machinery and equipment to the extent the capitalized manufacturing machinery and equipment costs are excluded from sales and use tax pursuant to R.S. 47:301(3), and the capitalized cost for the purchase of an existing building. When a taxpayer purchases an existing building and capital expenditures are used to rehabilitate the building, the costs of the rehabilitation only shall be considered qualified expenditures. Additionally, a taxpayer shall be allowed to increase their qualified expenditures to the extent a taxpayer's capitalized basis is properly reduced by claiming a federal credit.

*Quarterly Report*—the Quarterly Report of Wages Paid that a business files with the Louisiana Workforce Commission.

*Rural Enterprise Zone*—an enterprise zone located in a parish having a current U.S. Census population of 75,000 or less.

*Some Form of Public Assistance*—any program of assistance financed in whole or in part by a federal, state, or any local government agency, eligibility for which is dependent upon the employment status or income level of the individual. Any such assistance must have been received by the individual within a six-month period prior to their hire date. Unemployment is not public assistance.

*State*—state of Louisiana

*Unemployable by Traditional Standards*—having no prior work history or job training, having a criminal record (excluding misdemeanors), having a history of being unable to retain employment after gaining it, or being physically challenged.

*Urban Enterprise Zone*—an enterprise zone located in a parish having a current U.S. Census population greater than 75,000.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2299 (November 2003), amended LR 37:2369 (August 2011).

## **§705. Endorsement Resolution**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, LR 8:230 (May 1982), amended LR 9:544 (August 1983), amended by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 17:253 (March 1991), amended by the Department of Economic Development, Office of Commerce and Industry, LR 22:447 (June 1996), amended by the Department of Economic Development, Office of Business Development, LR 29:2300 (November 2003), repealed LR 37:2371 (August 2011).

#### **§707. Items Eligible for Sales and Use Tax Rebate**

A. Materials that are permanently installed at the project site during the project period are eligible for sales and use tax rebates.

B. Materials that originate from a contractor or subcontractor's inventory and are permanently installed at the project site during the project period are eligible for sales and use tax rebates. In order for rebates to be issued on property withdrawn from inventory, the contractor or subcontractor must maintain sufficient records and provide sufficient information to enable the Department of Revenue to verify that Louisiana sales or use taxes were paid on the property for which rebate is claimed.

C. Machinery and equipment purchased for the project during the project period are eligible for sales and use tax rebates provided that the machinery and equipment are used exclusively at the project site, are owned by an entity named in the enterprise zone contract, and are intended to remain at the project site for the expected useful life of the machinery and equipment.

D. Machinery and equipment transferred into Louisiana for the project during the project period are eligible for sales and use tax rebates provided that the machinery and equipment are used exclusively at the project site, are owned by an entity named in the enterprise zone contract, and are intended to remain at the project site for the expected useful life of the machinery and equipment.

E. Software purchased, capitalized, and used by the business primarily at the project site during the project period is eligible for sales and use tax rebates.

F. Consumable items are not eligible for sales and use tax rebate. Ineligible items include but are not limited to: per diem, labor, service contracts, storage, freight, radios, laptop computers, utilities, permits and fees, office supplies, construction consumables, blades, drill bits, PVC sheeting, tape, gloves, dusk masks, and all leases and rentals.

G. Lease-purchases may be eligible for a sales and use tax rebate upon Department of Revenue's approval. The property acquired through lease-purchase must be used exclusively at the project site, must be owned by an entity named in the enterprise zone contract, and must be intended to remain at the project site for the expected useful life of the machinery and equipment. A copy of the lease-purchase agreement must be submitted with the claim for rebate request to Department of Revenue, Office Audit Division.

H. A lease of an improvement to immovable property may be eligible for sales and use tax rebate upon the following conditions:

1. the improvements were made with the specific intent to enter into a lease agreement for the use of the

improvements by the business, that is, an agreement to lease the improvements must exist before construction begins;

2. at its inception the lease must meet one or more of the following four criteria:

a. the lease transfers ownership of the property to the lessee by the end of the lease term;

b. the lease contains a bargain purchase option;

c. the lease term must be a minimum of twenty years;

d. the present value of the minimum lease payments, excluding any portion of the payments representing costs such as insurance, maintenance, and taxes to be paid by the lessor, equals or exceeds 90 percent of the fair value of the leased property; and

3. rebates shall be paid to the lessee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 9:230 (May 1982), amended LR 9:544 (August 1983), LR 11:96 (February 1985), amended by the Department of Economic Development, Office of Business Development, LR 17:255, (March 1991), LR 22:449 (June 1996), LR 29:2302 (November 2003), LR 37:2372 (August 2011).

#### **§709. Targeted Employees for a Business in an Urban Enterprise Zone**

A. A business located in an urban enterprise zone and receiving the benefits of this Chapter must certify that at least 35 percent of the employees filling net new jobs meet one of the following requirements:

1. resident in an enterprise zone in the state;

2. receiving some form of public assistance within the six-month period prior to their hire date;

3. lacking basic skills; or

4. unemployable by traditional standards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, LR 8:230 (May 1982), amended LR 9:544 (August 1983), amended by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce, Finance Division, LR 17:253 (March 1991), amended by the Department of Economic Development, Office of Commerce and Industry, LR 22:447 (June 1996), amended by the Department of Economic Development, Office of Business Development, LR 29:2300 (November 2003), LR 37:2372 (August 2011).

#### **§711. Targeted Employees for a Business in a Rural Enterprise Zone**

A. A business located in a rural enterprise zone and receiving the benefits of this Chapter must certify that at least 35 percent of the employees filling net new jobs meet one of the following requirements:

1. resident of the same parish as the project site;

2. resident of an enterprise zone in the state;

3. receiving some form of public assistance within the six month period prior to their hire date;

4. lacking basic skills; or

5. unemployable by traditional standards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, LR 8:230 (May 1982), amended LR 9:544 (August 1983), amended by the

Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 17:254 (March 1991), amended by the Department of Economic Development, Office of Commerce and Industry, LR 22:448 (June 1996), amended by the Department of Economic Development, Office of Business Development, LR 29:2301 (November 2003), LR 37:2372 (August 2011).

**§713. Targeted Employees for a Business in an Economic Development Zone**

A. A business located in an economic development zone and receiving the benefits of this Chapter must certify that at least 35 percent of the employees filling net new jobs meet one of the following requirements:

1. resident of the same parish as the project site;
2. resident of an enterprise zone in the state;
3. receiving some form of public assistance within the six month period prior to their hire date;
4. lacking basic skills; or
5. unemployable by traditional standards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2301 (November 2003), amended LR 37:2373 (August 2011).

**§715. Targeted Employees for a Business Not in an Enterprise Zone or Economic Development Zone**

A. A business not located in an enterprise zone or economic development zone and receiving the benefits of this Chapter must certify that at least 35 percent of the employees filling net new jobs meet one of the following requirements:

1. resident of an enterprise zone in the state;
2. receiving some form of public assistance within the six month period prior to their hire date;
3. lacking basic skills; or
4. unemployable by traditional standards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2301 (November 2003), amended LR 37:2373 (August 2011).

**§717. Annual Employee Certification**

A. An annual Employee Certification Report (ECR) must be filed with the Business Incentive Services by May 31 on all active contracts validating compliance with §§709, 711, 713, and 715. Failure to file may result in contract cancellation. One 30 day extension may be granted if requested in writing.

B. If the employee certification report substantiates that the business has not created the permanent full-time net new jobs required for qualification under §701.E.1, the board shall cancel the contract and the business shall refund all credits and rebates received. If not timely paid in compliance with the contract, the department will notify Department of Revenue of the contract violation, and the business will be subject to the provisions of §737.

C. For projects with advance notifications filed with Business Incentives Services prior to the effective date of the 2010 revision of these rules, the annual employee certification process will be performed in accordance with prior policy and practice.

D. A business may request that its contract be terminated and that it no longer be required to file an ECR if:

1. the contract has been in effect for at least 30 months; and
2. the business has met all of the requirements of the program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2301 (November 2003), amended LR 37:2373 (August 2011).

**§721. Advance Notification**

A. An Advance Notification form, and the required fee, shall be filed with Business Incentive Services prior to the beginning of the project. All incentives for the same project must be indicated on one advance notification and be identified by one project number. It is not acceptable to apply for Enterprise Zone Program and use the same project in a miscellaneous capital addition application for the Industrial Tax Exemption Program. Internet filing of the advance notification may be made at the department website.

B. An advance notification expires one year after the estimated project ending date shown on the advance notification, unless an application is timely filed, or a written date revision request is received by Business Incentive Services prior to the expiration date.

C. An advance notification filed after the beginning of the project requires a waiver of late filing from the board, based upon events beyond the control of the business caused the late filing or documented fault or error on the part of the business incentive services that caused the business's late filing. Lack of knowledge of the existence of the Enterprise Zone Program or its benefits or procedures will not be accepted as a valid reason for waiving the timely filing requirement. A waiver of late filing will allow the business to proceed as if the advance notification was filed timely.

D. A business proposing a project exceeding 30 months must separate the project into phases with no phase having a project period greater than 30 months. The business must comply with §701.E. qualifications, and file a separate advance notification, application, project completion report, and affidavit of final cost, with the required fees, for each phase of the project. The business must elect either the sales and use tax rebate or the investment tax credit for all phases of the project. Businesses electing the investment tax credit are not subject to the 50 percent limitation of §731.B. for phases subsequent to the initial phase, and may elect to file one investment tax credit claim for all consecutive project periods.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development LR 29:2302 (November 2003), amended LR 37:2373 (August 2011).

**§723. Application**

A. An application for an enterprise zone contract, and the required fee, must be filed with Business Incentives Services, on the form prescribed, within three months after the project ending date. Internet filing of the application may be made at the department's website. Upon request, the business shall receive a thirty day extension of time in which to file its application, provided such request for extension is



received by Business Incentives Services no later than the filing deadline date.

B. With or after the filing of the advance notification, but no later than with the filing of the application, the business shall file with Business Incentives Services, on the form prescribed, a qualification certification of the intended number of permanent full-time net new jobs for purposes of determining eligibility for the Enterprise Zone Program.

C. An application fee equal to 0.2 percent (0.002) of the total estimated tax relief shall be submitted with each application. Total estimated tax relief includes jobs tax credits, state sales and use tax rebates and investment tax credits. Jobs tax credits are calculated by multiplying the total new jobs estimated to be created within the five-year contract period by \$2,500 (\$5,000 for rubber, aerospace or auto parts manufacturers). An additional application fee will be due if a project's employment or investment is increased from that stated in the application, resulting in a minimum fee of \$100 more than previously paid. The minimum fee is \$200 and the maximum fee is \$5,000 per application. All fees shall be made payable to: Louisiana Department of Economic Development.

D. An application must be submitted to Business Incentive Services at least 45 days prior to the board meeting where it is intended to be presented for approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development LR 29:2302 (November 2003), amended LR 37:2373 (August 2011).

#### **§725. Recommendations of the Secretaries of Economic Development and Revenue**

A. Business Incentive Services shall forward the application with its recommendation to the secretary of the Louisiana Department of Revenue and the secretary of the Louisiana Department of Economic Development for their review and recommendations. The secretaries of the Department of Revenue and the department may submit a letter of no objection in lieu of a letter of recommendation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2303 (November 2003), amended LR 37:2374 (August 2011).

#### **§727. Application Review by the Board of Commerce and Industry**

A. Business Incentive Services shall present an agenda of applications to the board with recommendations based upon its findings.

B. Each business or its representative will be notified of the board meeting date at which its application will be considered. The business should have someone present who is able to answer any questions the board may have regarding the information contained in the application. In the event there is no representative present, the application may be deferred or denied.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2303 (November 2003), amended LR 37:2374 (August 2011).

#### **§729. Enterprise Zone Program Contract**

A. Upon approval of the application, the board shall enter into a contract with the business for the benefits allowed by this Chapter. The business must execute its portion of the contract and return it to Business Incentive Services within 60 days. If the contract is not returned within 60 days, the board may rescind the approval of the application. When the contract has been fully executed, an original will be returned to the business. An original will be sent to the Department of Revenue and, if applicable, a copy sent to the political subdivision.

B. Business Incentive Services must be notified, on the prescribed form, of any change that will affect the contract. This includes, but is not limited to, changes in the ownership or operational name of the business holding a contract, or the suspension, closing, or abandonment of operations. Failure to report any changes within six months may constitute a breach of contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2303 (November 2003), amended LR 37:2374 (August 2011).

#### **§731. Project Completion**

A. Within six months after the project ending date or the governor's signature on the contract, whichever is later, the business shall file with Business Incentive Services, on the prescribed form, a project completion report and an affidavit of final cost, with the required inspection and audit fee.

B. The project completion report shall confirm the beginning of the project, the project ending date, and the incentive benefits elected. Local sales and use tax rebate is not available if the investment tax credit is elected. Except as provided in Section 721.D, the investment tax credit may not be elected if more than 50 percent of the qualified expenditures related to the project (including intangible costs such as architectural and/or engineering fees prior to construction) are incurred before the filing of the advance notification.

C. The affidavit of final cost shall list all eligible purchases and qualified expenditures for the project, with a description of the buildings, equipment, or other assets, and the cost of each item.

D. After completion of the project and the governor's signature of the contract, the department shall sign the project completion report and forward copies to the business, the Department of Revenue, and any political subdivision rebating local sales and use tax.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2303 (November 2003), amended LR 37:2374 (August 2011).

#### **§732. Investment Tax Credit Claims**

A. The investment tax credit is earned in the year in which the project is placed in service, and is based upon all qualified capitalized expenditures related to the project as of the date it is placed in service, regardless of whether the actual time period involved exceeds 30 months.

B. The investment tax credit claim must be filed with the Department of Revenue, Office Audit Division, with the required documentation.

C. The investment tax credit may be taken on qualified expenditures that are related to the project and are placed in service during the project period. The investment tax credit applies to the assets that are related to the qualified expenditures, provided that the business reasonably intends for such assets to remain at the project site for their expected useful life. The assets may be recorded on the financial statements of a company that is an affiliate of the business.

D. The claim for investment tax credit must be filed with the Department of Revenue no later than six months after the Governor's signature of the contract and the department's signature of the project completion report, and must be accompanied by the signed Project Completion Report. Upon request, the business shall receive a 30 day extension of time in which to file its claim, provided such request for extension is received by the Department of Revenue prior to the expiration of such filing period. The Department of Revenue is also authorized to grant the business an additional extension of time, not to exceed 60 days, in which to file its claim provided that the business shows reasonable cause for granting such extension.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 37:2374 (August 2011).

### **§733. Sales and Use Tax Rebate Requests**

A. The Enterprise Zone Program contract will not authorize the business to make tax exempt purchases from vendors. The Department of Revenue will advise the business on the proper procedures to obtain the state sales and use tax rebate. The request for rebate of sales and use taxes must be made by filing a claim with the Department of Revenue, Office Audit Division, and must include the following:

1. list of eligible purchases, including a brief description of each item, the vendor's name, date of the delivery, sales price and the amount of state sales and use tax paid. The listed items must have been purchased by the business, or by a builder, a contractor, or other party that contracted with the owner to provide materials, equipment, machinery, or software that is used by the business at the project site or is listed in the Enterprise Zone Program contract;

2. certification that the listed materials are reasonably expected to qualify for a rebate under the Enterprise Zone Program; and

3. certification that state sales and use taxes have been paid on the listed items.

B. The request may be filed on the official Department of Revenue "claim for rebate" form or on other forms prepared by the business. After the Department of Revenue has validated the information on the claim for rebate, a rebate check will be issued for the amount of substantiated state sales and use taxes paid.

C. The request for rebate must be filed with the Louisiana Department of Revenue, and the political subdivision rebating local sales and use tax, no later than six months after the Department of Economic Development signs a project completion report and sends it to the Department of Revenue, the political subdivision, and the business, or no later than 30 days after the end of the

calendar year in the case of customer-owned tooling used in a compression molding process and must be accompanied by the signed Project Completion Report. Upon request, the business shall receive a 30 day extension of time in which to file its claim, provided such request for extension is received by the Department of Revenue prior to the expiration of such filing period. The Department of Revenue is also authorized to grant the business an additional extension of time, not to exceed 60 days, in which to file its claim, provided that the business shows reasonable cause for granting such extension.

D. The business should contact the political subdivision issuing the endorsement resolution to determine the procedure for local sales and use tax rebate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2303 (November 2003), amended LR 37:2375 (August 2011).

### **§735. Business with a Contract Must File State Income and Franchise Tax Returns**

A. Businesses that have satisfied their Louisiana income tax and/or franchise tax liability by applying jobs tax credits earned under this Chapter shall file the same forms and tax returns with the Department of Revenue that are required if no jobs tax credit were claimed. Each annual return on which jobs tax credits are taken must have a copy of the letter from Business Incentive Services certifying the jobs tax credits earned. If total jobs tax credits are less than the total taxes, remittance in the amount of the difference must be enclosed with the tax return. Limited Liability Companies, Sub Chapter S Corporations, etc., must have the name(s) of owners and their Social Security numbers or Department of Revenue number for corporations listed on the contract in order for jobs tax credits to flow through to the owner(s).

B. Partnerships and sole proprietorships shall file the same returns that are required if the jobs tax credits were claimed. Each annual return on which jobs tax credits are taken must have a copy of the letter from Business Incentives Services certifying the tax credits earned. If total jobs tax credits are less than the total taxes, remittance in the amount of the difference must be enclosed with the tax return.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2304 (November 2003), amended LR 37:2375 (August 2011).

### **§737. Violation; Cancellation of Contract**

A. On the initiative of the board upon notice or a written complaint of violation of the terms of the statutes, rules or the contract, the board or its representative shall determine if a full investigation should be made. The board shall have full authority for such investigation, including but not exclusively, the authority to call for reports, pertinent records, or other information from the business. If the investigation appears to substantiate a violation the board or its representative will present the subject contract for formal action.

B. If a business is found to be in violation of the statutes, these rules or the contract, board may cancel the contract and the business shall remit back to the state all jobs tax credits

taken on income tax and franchise returns, all state and local sales and use tax rebates, Investment Tax Credit, and any other taxes that would have been imposed but for the issuance of this contract.

C. The department shall notify the Department of Revenue of the cancellation, and the Department of Revenue will proceed by all appropriate means to recapture all benefits received pursuant to this Chapter, including any penalty and interest due.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2304 (November 2003), amended LR 37:2375 (August 2011).

#### **§739. Fees**

A. Advance notifications, applications, and Affidavits of Final Cost are not considered filed without payment of the proper fee, and Business Incentives Services may return the filing to the business if the estimated tax relief or the fee submitted is incorrect. An application or Affidavit of Final Cost may be resubmitted within 30 days with the correct fee without penalty.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2304 (November 2003), amended LR 37:2376 (August 2011).

#### **§743. Relocation of Enterprise Zones**

A. A municipality or parish requesting the relocation of an Enterprise Zone must provide valid reason for requesting the move and must have the approval of the board.

B. The residents of originally designated Enterprise Zone may qualify as part of the 35 percent residency requirement.

C. The effective date of a relocation approved by the Board shall be the date of passage affixed to the resolution by the local governing authority requesting the relocation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2304 (November 2003), amended LR 37:2376 (August 2011).

#### **§745. Appeals**

A. A business may appeal an action of the Board by submitting its appeal along with any necessary documentation to Business Incentives Services no later than 90 days after the board action. The appeal shall not be considered by the board less than 30 days after submission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2304 (November 2003), amended LR 37:2376 (August 2011).

#### **§749. Prohibit Local Fees and Prohibit Local Conflicting Employment Practices**

A. No political subdivision shall charge any fees or require any employment practices which conflict with state law as a precondition to authorize tax benefits under this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 17:257 (March 1991), amended by the Department of Economic Development, Office of Commerce and Industry, LR 22:451 (June 1996), amended by the Department of

Economic Development, Office of Business Development, LR 29:2305 (November 2003), LR 37:2376 (August 2011).

Kristy G. McKearn  
UnderSecretary

1108#051

### **RULE**

#### **Department of Economic Development Office of Business Development**

#### **Industrial Ad Valorem Tax Exemption Program (LAC 13:I.Chapter 5)**

Editor's Note: This Rule is being printed in its entirety to correct an error upon submission. The original Rule may be viewed in the January 20, 2011 edition of the *Louisiana Register* on pages 304-309. The effective date of this Rule is August 20, 2011.

The Department of Economic Development, Office of Business Development, as authorized by and pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., hereby repeals Sections 501 and 539 through 565, and amends and reenacts Rules 502 through 507 of the Industrial Ad Valorem Tax Exemption Program as LAC 13:I.Chapter 5.

### **Title 13**

#### **ECONOMIC DEVELOPMENT**

#### **Part I. Financial Incentive Programs**

#### **Chapter 5. Industrial Ad Valorem Tax Exemption Program**

#### **§501. Use of Louisiana Contractors, Labor and Supplies**

Repealed.

AUTHORITY NOTE: Adopted in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Adopted by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974, repealed by the Department of Economic Development, Office of Business Development, LR 37:2376 (August 2011).

#### **§503. Advance Notification; Application**

A. An advance notification of intent to apply for tax exemption shall be filed with the LED Office of Business Development (OBD) on the prescribed form prior to the beginning of construction or installation of facilities. The phrase "beginning of construction" shall mean the first day on which foundations are started, or, where foundations are unnecessary, the first day on which installation of the facility begins. An advance notification fee of \$100 shall be submitted with the form. The advance notification will expire and become void if no application is filed within 12 months of the estimated project ending date stated in the advance notification (subject to amendment by the applicant).

B. Except as otherwise provided for miscellaneous capital additions under §505, an application for tax exemption may be filed with OBD on the prescribed form:

1. either concurrent with or after filing the advance notification, but no later than 90 days after the beginning of operations or end of construction, whichever occurs first;

2. the deadline for filing the application may be extended pursuant to §523;

3. an applicant filing an application prior to the beginning of operations or end of construction of the project shall file an annual status report with OBD on the prescribed form by December 31, until the Project Completion Report and Affidavit of Final Cost are filed. If the applicant fails to timely file a status report the board may, after notice to the applicant, terminate the contract.

C. An application fee shall be submitted with the application in the amount equal to 0.2 percent of the estimated total amount of taxes to be exempted. In no case shall an application fee be smaller than \$200 and in no case shall a fee exceed \$5,000 per project.

D. OBD reserves the right to return the advance notification, application, or Affidavit of Final Cost to the applicant if the form is incomplete or incorrect. or the correct fee is not submitted. The document may be resubmitted with the correct information and fee.

E. If the application is submitted after the filing deadline, the ten year term of exemption available under an initial contract and renewal thereof may be reduced by one year for each year or portion thereof that the application is late, up to a maximum reduction of five years. The board may impose any other penalty for late filing that it deems appropriate.

F. Eligibility of the applicant and the property for the exemption will be reviewed by the board based upon the facts and circumstances existing at the time the application is considered. The property exempted may be increased or decreased based upon review of the application, Project Completion Report or Affidavit of Final Cost. An application filed prior to completion of construction may be considered by the board and a contract may be executed based upon the best available estimates, subject to review and approval of the Project Completion Report and Affidavit of Final Cost. If the applicant fails to timely file the Project Completion Report or Affidavit of Final Cost the board may, after notice to the applicant, terminate the contract.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by Department of Commerce, Office of Commerce and Industry, LR 11:97 (February 1985), LR 12:662 (October 1986), amended by the Department of Economic Development, Office of Commerce and Industry, LR 20:864 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2376 (August 2011).

#### **§505. Miscellaneous Capital Additions**

A. Miscellaneous capital additions (MCA) is an accumulation of capital assets placed in service during the previous ad valorem tax year. An MCA must be part of a project that is completed within an 18 month period, and may not exceed \$5,000,000.

##### **B. MCA Applications**

1. For property in parishes other than Orleans Parish, MCA Applications for tax exemption shall be filed with OBD on the prescribed form not later than March 31 of each year, listing and clearly documenting the nature, date and amount of miscellaneous capital additions placed in service during the preceding calendar year, and deducting therefrom the original cost of any replacements made.

2. For property in Orleans Parish, MCA applications for tax exemption shall be filed with OBD on the prescribed form not later than October 31, listing and clearly documenting the nature, the date and the amount of miscellaneous capital additions placed in service since August 1 of the preceding year, and deducting therefrom the original cost of any replacements made.

C. An application fee shall be submitted with the MCA application in the amount equal to 0.2 percent of the estimated total amount of taxes to be exempted. In no case shall an application fee be smaller than \$200 and in no case shall a fee exceed \$5,000 per project.

D. OBD reserves the right to return the application to the applicant if the form is incomplete or incorrect. or the correct fee is not submitted. The document may be resubmitted with the correct information and fee.

E. If the application is submitted after the filing deadline, the ten year term of the exemption available under an initial contract and renewal thereof shall be reduced by one year for each month or portion thereof that the application is late, up to a maximum reduction of five years. The board may impose any other penalty for late filing that it deems appropriate.

F. Eligibility of the applicant and the property for the exemption will be reviewed by the Board based upon the facts and circumstances existing at the time the application is considered. The property exempted may be increased or decreased based upon review of the application.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, LR 11:97 (February 1985), amended LR 12:662 (October 1986), amended by the Department of Economic Development, Office of Commerce and Industry, LR 20:865 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2377 (August 2011).

#### **§507. Manufacturing Establishment Clarified**

A. The terms *manufacturing establishment* and *addition* as used herein mean a new plant or establishment or an addition or additions to any existing plant or establishment which engage in the business of working raw materials into wares suitable for use or which give new shapes, qualities, or combinations to matter which already has gone through some artificial process.

B. The board shall consider for tax exemption buildings and facilities used in the operation of new manufacturing establishments located within the state of Louisiana (subject to the limitations stated in §517 and 519) and additions for existing manufacturing establishments within the state of Louisiana. Exemptions are granted to the owners of buildings that house a manufacturing operation and facilities that are operated specifically in the manufacturing of a product. The board recognizes two categories of ownership:

1. owners who engage in manufacturing at said facilities; and

2. owners who are not engaged in manufacturing at said manufacturing establishment, but who have provided either or both of the following for a predetermined manufacturing establishment:

a. buildings to house a manufacturing establishment;

b. facilities that consist of manufacturing equipment operated specifically in the manufacturing process.

C. Leased property is eligible for the exemption, if the property is used in the manufacturing process, remains on the plant site, and the manufacturer is obligated under the lease agreement to pay the property taxes if the exemption were not granted.

D. Capitalized materials which are an essential and integral part of a manufacturing process, but do not form part of the finished product, may be exempted along with the manufacturing facility. Some examples of these are:

1. ammonia in a freezing plant;
2. solvent in an extraction plant; and
3. catalyst in a manufacturing process.

E. To be eligible for exemption, a manufacturing establishment must be in an operational status, engaged in the business of producing or processing goods. An owner of a new facility under construction may apply for an exemption with the expectation that the facility will become operational. If the manufacturing establishment fails to become operational or ceases operations without a reasonable expectation of recommencing operations, the facility may no longer be eligible for exemption and its contract may be subject to termination under Section 531.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:865 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2377 (August 2011).

#### **§509. Office Furniture and Fixtures; Portable Equipment**

A. Office furniture and fixtures are eligible for tax exemption only when they are an integral part of the manufacturing operation and permanently located at the manufacturing establishment.

B. Portable equipment is subject to exemption if it is not removed from the exempted property and is necessary to the continued maintenance or operation of the manufacturing process. Such property, therefore, is not to be rented, leased or used outside facility boundaries.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:866 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2378 (August 2011).

#### **§511. Replacement Property**

A. Capital additions for remodeling an existing manufacturing facility may be exempted. If replacements are made, only the capital expenditures in excess of original cost shall be eligible for tax exemption. A deduction for the original cost of property to be replaced shall not be made if the project will result in capital additions that exceed \$50,000,000.

B. Exemption may be granted on the costs of rebuilding a partially or completely damaged facility, but only on the amount in excess of the original cost.

C. Original costs deducted from replacements made or rebuilding shall be clearly documented.

D.1.A deduction for the original cost of property to be replaced, as provided by Subsections A or B, shall not be made if the project is related to the replacement or reconstruction of property after the destruction of or damage to such property, as a result of a qualified disaster.

2. For purposes of this Subsection, the term “qualified disaster” means:

a. a disaster which results from:

i. an act of terror directed against the United States or any of its allies; or

ii. any military action involving the Armed Forces of the United States and resulting from violence or aggression against the United States or any of its allies (or threat thereof), but not including training exercises;

b. any disaster which, with respect to the area in which the property is located, resulted in a subsequent determination by the President of the United States that such area warrants assistance by the federal government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act; or

c. a disaster which is determined by an applicable federal, state, or local authority (as determined by the secretary) to warrant assistance from the federal, state, or local government or agency or instrumentality thereof.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:866 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2378 (August 2011).

#### **§513. Relocations**

A. A manufacturing establishment moved from one location in the state to another place within the state shall be eligible for the unexpired consecutive years, if any, of the tax exemption contract granted the original location. Exemption may be granted at the new location on those costs of necessary replacements which are in excess of the original cost at the prior facility.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:866 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 29:2633 (December 2003), LR 37:2378 (August 2011).

#### **§515. Used Equipment**

A. Used equipment is eligible for tax exemption provided no ad valorem property taxes have been paid in Louisiana on said property.

AUTHORITY NOTE: Promulgated in accordance with Article VD, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:886 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2378 (August 2011).

#### **§517. Assessed Property**

A. The board shall not consider for tax exemption any manufacturing establishment or addition thereto once such establishment or addition has been in operation for a period of six months, unless the assessor of the parish in which the

establishment or addition is located certifies in writing that said establishment or addition is not on the taxable rolls. If the establishment or addition is on the taxable rolls the board shall consider granting tax exemption only if the assessor agrees in writing to remove the establishment or addition from the taxable rolls should the tax exemption be granted.

B. The board shall not consider for tax exemption any property listed on an application on which ad valorem property taxes have been paid.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Commerce, Office of Commerce and Industry, LR 11:97 (February 1985), amended by the Department of Economic Development, Office of Commerce and Industry, LR 20:866 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2378 (August 2011).

#### **§519. Land**

A. The land on which a manufacturing establishment is located is not eligible for tax exemption.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:866 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2379 (August 2011).

#### **§521. Inventories**

A. The following are not eligible for tax exemption:

1. inventories of raw materials used in the course of manufacturing;
2. inventories of work-in-progress or finished products;
3. any other consumable items.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:866 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2379 (August 2011).

#### **§523. Extension of Time**

A. OBD may grant an extension of up to six months for the filing of an application (§503.B.), a Project Completion Report (§525), or an Affidavit of Final Cost (§527), provided the request for extension is received prior to the filing deadline.

B. Additional extensions of time may be granted for good cause.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2379 (August 2011).

#### **§525. Effective Date of Contract; Project Completion Report**

A. The owner of a new manufacturing establishment or addition shall document the beginning date of operations and the date that construction is substantially complete. The

owner must file that information with OBD on the prescribed Project Completion Report form not later than 90 days after the beginning of operations, completion of construction, or receipt of the fully executed contract, whichever occurs last. The deadline for filing the Project Completion Report may be extended pursuant to §523.

B. The effective date of tax exemption contracts for property located in parishes other than Orleans Parish shall be December 31 of the year in which effective operation began or construction was essentially completed, whichever occurs first. The effective date of tax exemption contracts for property located in Orleans Parish shall be July 31 of the applicable year.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2379 (August 2011).

#### **§527. Affidavit of Final Cost**

A. Within six months of the beginning of operations, completion of construction, or receipt of the executed contract, whichever occurs last, the owner of a manufacturing establishment or addition shall file on the prescribed form an Affidavit of Final Cost showing complete cost of the exempted project. A fee of \$100 shall be filed with the Affidavit of Final Cost. Upon request by OBD, a map showing the location of all facilities exempted in the project shall be submitted in order that the exempted property may be clearly identifiable. The deadline for filing the Affidavit of Final Cost may be extended pursuant to §523.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Commerce, Office of Commerce and Industry, LR 12:662 (October 1986), amended by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2379 (August 2011).

#### **§529. Renewal of Tax Exemption Contract**

A. Application for renewal of the exemption must be filed with OBD on the prescribed form not more than six months before, and not later than, the expiration of the initial contract. A fee of \$50 shall be filed with the renewal application. The document shall not be considered officially received and accepted until the appropriate fee is submitted. Upon proper showing of full compliance with the initial contract of exemption, the contract may be approved by the board for an additional period of up to but not exceeding five years.

B. Eligibility of the applicant and the property for renewal of the exemption will be reviewed by the Board using the same criteria that was used for the initial contract, and based upon the facts and circumstances existing at the time the renewal application is considered. The property exempted for the renewal period may be increased or decreased based upon review of the renewal application. The term of the renewal contract may be reduced by one year for each calendar month, or portion thereof, that the renewal

application is filed late. The board may impose any other penalty for late renewal submission that it deems appropriate.

**AUTHORITY NOTE:** Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

**HISTORICAL NOTE:** Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2379 (August 2011).

### **§531. Violation of Rules or Documents, Final Inspection**

A. The board reserves the right, on its own initiative or upon written complaint of an alleged violation of terms of tax exemption rules or documents, to conduct a final inspection. During the final inspection OBD may cause to be made a full investigation on behalf of the board and shall have full authority for such investigation including authority to demand reports or pertinent records and information from the applicant and complainants. Results of the investigation will be presented to the board.

B. All contracts of exemption shall be subject to the final inspection. If a final inspection indicates that the applicant has violated any terms of the contract or rules, or that the exempt facility is not engaged in manufacturing, the board may conduct a hearing to reconsider the contract of exemption, after giving the applicant not less than 60 days notice.

C. If the board determines that there has been a violation of the terms of the contract or the rules, that the property exempted by the contract is not eligible because it is not used in a manufacturing process, or that the facility has not commenced or has ceased manufacturing operations, the board may terminate or otherwise modify the contract.

**AUTHORITY NOTE:** Promulgated in accordance with Article VU, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

**HISTORICAL NOTE:** Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2380 (August 2011).

### **§533. Reporting Requirements for Changes in Operations**

A. OBD is to be notified immediately of any change which affects the tax exemption contract. This includes any changes in the ownership or operational name of a firm holding a tax exemption contract. The board may consider restrictions or cancellation of a contract for cessation of the manufacturing operation, or retirement of any portion of the exempted equipment. Failure to report any material changes constitutes a breach of contract and, with approval by the board, shall result in restriction or termination.

**AUTHORITY NOTE:** Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2380 (August 2011).

### **§535. Sale or Transfer of Exempted Manufacturing Establishment**

A. In the event an applicant should sell or otherwise dispose of property covered by a contract of exemption, the purchaser of the said plant or property may, within three months of the date of such act of sale, apply to the board for a transfer of the contract. The board shall consider all such applications for transfer of contracts of exemption strictly on the merits of the application for such transfer. No such transfer shall in any way impair or amend any of the provisions of the contract so transferred other than to change the name of the contracting applicant. Failure to request or apply for a transfer within the stipulated time period shall constitute a violation of the contract.

**AUTHORITY NOTE:** Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:868 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2380 (August 2011).

### **§537. Reporting to the Parish Assessor**

A. The applicant shall file annually with the assessor of the parish in which the manufacturing establishment is located, a complete taxpayer's report on forms approved by the Louisiana Tax Commission, in order that the exempted property may be separately listed on the assessment rolls.

**AUTHORITY NOTE:** Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

**HISTORICAL NOTE:** Adopted by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974, amended by the Department of Economic Development, Office of Business Development, LR 37:2380 (August 2011).

### **§539. Manufacturing Establishment Clarified**

Repealed.

**AUTHORITY NOTE:** Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

**HISTORICAL NOTE:** Adopted by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974, repealed by the Department of Economic Development, Office of Business Development, LR 37:2380 (August 2011).

### **§541. Office Furniture and Fixtures**

Repealed.

**AUTHORITY NOTE:** Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

**HISTORICAL NOTE:** Adopted by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974, repealed by the Department of Economic Development, Office of Business Development, LR 37:2380 (August 2011).

### **§543. Portable Equipment**

Repealed.

**AUTHORITY NOTE:** Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

**HISTORICAL NOTE:** Adopted by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974, repealed by the Department of Economic Development, Office of Business Development, LR 37:2380 (August 2011).

**§545. Relocated Plants**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974, amended by the Department of Economic Development, Office of Business Development, LR 37:2381 (August 2011).

**§547. Secondhand Items**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974, repealed by the Department of Economic Development, Office of Business Development, LR 37:2381 (August 2011).

**§549. Assessed Property**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974, repealed by the Department of Economic Development, Office of Business Development, LR 37:2381 (August 2011).

**§551. Land**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974, repealed by the Department of Economic Development, Office of Business Development, LR 37:2381 (August 2011).

**§553. Inventories**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974, repealed by the Department of Economic Development, Office of Business Development, LR 37:2381 (August 2011).

**§555. Extension of Time**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974, repealed by the Department of Economic Development, Office of Business Development, LR 37:2381 (August 2011).

**§557. Effective Date of Contract**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974, repealed by the Department of Economic Development, Office of Business Development, LR 37:2381 (August 2011).

**§559. Affidavit of Final Cost**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974, repealed by the Department of Economic Development, Office of Business Development, LR 37:2381 (August 2011).

**§561. Renewal of Tax Exemption Contract**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974, repealed by the Department of Economic Development, Office of Business Development, LR 37:2381 (August 2011).

**§563. Violation of Rules or Documents**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974, repealed by the Department of Economic Development, Office of Business Development, LR 37:2381 (August 2011).

**§565. Changes in Tax Exemption Contract**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974, amended by the Department of Commerce, Office of Commerce and Industry, 12:663 (October 1986), repealed by the Department of Economic Development, Office of Business Development, LR 37:2381 (August 2011).

Kristy G. McKearn  
Undersecretary

1108#052

**RULE**

**Board of Elementary and Secondary Education**

Bulletin 111—The Louisiana School, District, and State Accountability System  
(LAC 28:LXXXIII.302, 409, 515, 703, 3501, 4301, 4302, 4311, 4313, 4503, and 4509)

Editor’s Note: Section 409 is being repromulgated to correct a submission error. The original Rule may be viewed on pages 2118-2120 of the July 20, 2011 edition of the *Louisiana Register*.

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 111—The Louisiana School, District, and State Accountability System*: §302. 9-12 Transition from 2010 to 2012, §409. Calculating a 9-12 Assessment Index, §515. State Assessments and Accountability, §703. Inclusion of Students in the Subgroup Component, §3501. Alternative Schools, §4301. Inclusion of All Districts, §4302. District Responsibility Indicators, §4503. One Year Waiver for “Severe Impact” Schools and Districts, §4509. Assessment Index Calculations with Displaced Students for Limited Impact Schools, §4311. District Letter Grades, and §4313. Corrective Actions. Act



478 of the 1997 Regular Legislative Session called for the development of an accountability system for the purpose of implementing fundamental changes in classroom teaching by helping schools and communities focus on improved student achievement. The state's accountability system is an evolving system with different components that are required to change in response to state and federal laws and regulations.

The changes in *Bulletin 111*, Chapters 3, 4, 5, 7, and 35, provide detail for transition from the use of the graduation exit exams (GEE) to end-of-course (EOC) tests. Added to policy are the subject-test index points for calculating an assessment index, use of end-of-course with LAA 1 and LAA 2, and rules for routing end-of-course scores from alternative schools to sending schools. Federally required changes to ethnicity codes are made for reporting test results by subgroup.

The changes in *Bulletin 111*, Chapters 43 and 45 provide detail for the district letter grade system to replace performance labels in policy.

**Title 28  
EDUCATION**

**Part LXXXIII. Bulletin 111—The Louisiana School, District, and State Accountability System  
Chapter 4. Assessment, Attendance, and Dropout Index Calculations**

**§409. Calculating a 9-12 Assessment Index**

A. For GEE, use the values from the table in §405.A, above.

B. For EOC, use the values in the table below:

EOC	
Label	Subject-Test Index Points
Excellent	200
Good	135
Fair	75
Needs Improvement	0

C. Adjust each subject-test index by the corresponding dropout adjustment factor.

1. The 9th grade dropout adjustment factor is the previous year's 9th grade non-dropout rate plus 4.0 percent (100.0 percent - 9th grade DO rate + 4.0 percent).

2. The 10th grade dropout adjustment factor is the product of the previous year's 9th grade non-dropout rate plus 4.0 percent and the 10th grade non-dropout rate plus 4.0 percent [(100.0 percent - 9th grade DO rate + 4.0 percent) x (100.0 percent - 10th grade DO rate + 4.0 percent)].

3. The 11th grade dropout adjustment factor is the product of the previous year's 9th grade non-dropout rate plus 4.0 percent and the 10th grade non-dropout rate plus 4.0 percent and the 11th grade non-dropout rate plus 4.0 percent [(100.0 percent - 9th grade DO rate + 4.0 percent) x (100.0 percent - 10th grade DO rate + 4.0 percent) x (100.0 percent - 11th grade DO rate + 4.0 percent)].

D. Weight each adjusted subject-test index score by the corresponding value from the table below.

Grade	ELA	Math	Science	Social Studies	Total
9th Grade	1.00	1.00			2.00
10th Grade	1.25	1.25			2.5
11th Grade			1.25	1.25	2.5

E. Sum all weighted values from Subsection C of this Section.

F. Divide the sum from Subsection D of this Section, by the sum of all weights applied to subject-test index scores from the table above in Subsection C of this Section. This quotient is the 9-12 Assessment Index.

G. Example of 9-12 Assessment Index Calculation

1. Non-dropout rates in this example are; 9th-95.0 percent, 10th-98.0 percent, and 11th-99.0 percent.

Grade	Subject	Subject-Test Index Score	Dropout Adjustment	Adjusted Subject-Test Index Score	Unit Weight	Weighted Adjusted Subject-Test Index Score
9	ELA	100	.990	99.0	1000	99.0
9	MTH	50	.990	49.5	1000	49.5
10	ELA	100	1.010	101.0	1.25	126.3
10	MTH	150	1.010	151.5	1.25	189.4
11	SCI	50	1.040	52.0	1.25	65.0
11	SS	50	1.040	52.0	1.25	65.0
Sums					7	594.2
9-12 Assessment Index				594.2 ÷ 7 = 84.9		

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1021 (June 2006), amended LR 33:252 (February 2007), LR 36:1989 (September 2010), LR 37:2382 (August 2011).

Catherine R. Pozniak  
Executive Director

1108#026

**RULE**

**Board of Elementary and Secondary Education**

Bulletin 126—Charter Schools  
(LAC 28:CXXXIX.103, 305, 509, 515,  
518, 519, 701, 901, 1101, 1303, 1305,  
1501, 1503, 1801, 1903, and 2701)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 126—Charter Schools*: §103. Definitions, §305. BESE Duties Relating to Charter Schools, §509. Eligibility to Apply for a Type 5 Charter School, §515. Charter School Application Components, §518. BESE Pre-Opening Procedures Following Approval, §519. Local School Board Consideration of Charter Application, Awarding of Charters, §701. Charter School Contract with BESE, §901. Timeline for Charter School Opening, §1101. Charter School Evaluation, §1303. Third Year Review, §1305. Fourth Year Review of Charter Schools on Contract Probation, §1501. Renewal of Charter, §1503. Charter Renewal Process and Timelines, Chapter 18. Voluntary Relinquishment of a BESE-Authorized Charter, §1903. Material Amendments for BESE-Authorized Charter Schools, and §2701. Students Eligible to Attend. The update will bring Bulletin 126 into compliance with existing law regarding geographic attendance zones, letter grades for schools, and the academically unacceptable school status bar. Additionally, the update will clarify the specific pieces

that are required as part of a charter school application to bring it in line with national best practices. The update also revises the extension process to include a pre-assessment index that provides a baseline for measuring student growth, moves all extension decisions to January, and moves the extension process to January of the fourth academic year, and removes mandatory recommendations for revocation of a charter during the extension process. The update also revises the oversight process to include the financial risk assessment and clear criteria for major or minor legal and contractual offenses, which will create a fairer process in which schools are not handled harshly for minor offenses. Finally, the changes will create clear criteria for automatic renewals and the growth of existing charter schools through enrollment or grade level expansion.

## **Title 28**

### **EDUCATION**

#### **Part CXXXIX. Bulletin 126—Charter Schools**

##### **Chapter 1. General Provisions**

###### **§103. Definitions**

A. - D. ...

E. *Charter Operator*—the nonprofit corporation or school board authorized to operate a charter school.

F. - N. ...

O. *Local School Board*—any city, parish, or other local education agency.

P. - Q. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3973.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1357 (July 2008), amended LR 37:2383 (August 2011).

##### **Chapter 3. Charter School Authorizers**

###### **§305. BESE Duties Relating to Charter Schools**

A. - A.3. ...

4. to notify local school boards of the receipt of any Type 2 charter school application for a school which is proposed to be located within the district. In addition, the local board as well as other interested groups shall be allowed to provide written information regarding any charter application and be allowed to present information at a scheduled public meeting of BESE prior to any determination being made by BESE; and

5. to fulfill all other obligations created by state and federal law with respect to students attending charter schools.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3983.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1359 (July 2008), amended LR 37:2383 (August 2011).

##### **Chapter 5. Charter School Application and Approval Process**

###### **§509. Eligibility to Apply for a Type 5 Charter School**

A. - A.5. ...

B. The eligibility criteria set forth in this Section shall be the minimum criteria necessary to apply for a Type 5 charter, but shall in no way limit the information required in §513.C, Eligibility Review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3973, R.S. 17:3983, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1361 (July 2008), amended LR 37:2383 (August 2011).

###### **§515. Charter School Application Components**

A. - C. ...

D. The charter school application questions for all types of charter schools shall address the following:

1. an executive summary;

2. the role, scope, and mission of the proposed public charter school, including identification of the targeted student population and the community the school hopes to serve;

3. admission requirements, if any, that are consistent with the school's role, scope, and mission may be established in accordance with that permitted in Charter School Law and this bulletin;

4. a description of the jurisdiction within which a pupil shall reside or otherwise be eligible to attend a public school in order to be eligible for admission;

5. beginning with the 2011-2012 school year, for each elementary and middle charter school, other than a Type 2 charter school, a description of the geographic boundaries circumscribing the neighborhood immediately surrounding the charter school from which students residing within may be given preference for enrollment in accordance with R.S. 17:3991;

6. the grades to be served each year for the full term of the charter contract;

7. minimum, planned, and maximum enrollment per grade per year for the term of the charter contract;

8. evidence of community support for the proposed public charter school;

9. a description of how the proposed charter school fulfills one or more of the purposes specified in the Charter School Law and this bulletin;

10. background information on the proposed founding governing board members and, if identified, the proposed school leadership and management team;

11. the school's proposed calendar and sample daily schedule;

12. the school's proposed curriculum, a description of how it aligns with state standards, and how it will meet the needs of the targeted student population;

13. a description of the school's instructional design, including the type of learning environment (such as classroom-based or independent study), class size and structure, curriculum overview, and teaching methods, and how that program will meet the needs of the at-risk students to be served;

14. the school's plans for identifying and successfully serving students with disabilities, students who are English language learners, students who are academically behind, and gifted students in order to comply with applicable laws and regulations;

15. the school's plan for using internal and external assessments to measure and report student progress and a description of how such assessments align with state standards;

16. a description of co-curricular or extracurricular programs and how they will be funded and delivered;

17. plans and timelines for the school's recruitment, enrollment, and admission process;

18. school rules and regulations applicable to students, including disciplinary policies and procedures for all students, including those with exceptionalities, that

incorporate research-based discipline practices such as positive behavior interventions and supports restorative justice principles in accordance with R.S. 17:252;

19. an organizational chart that clearly presents the school's organizational structure, including lines of authority and reporting between the governing board, staff, any related bodies (such as advisory bodies or parent and teacher councils), and any external organizations that will play a role in managing the school;

20. a plan for complying with applicable public body laws;

21. a clear description of the roles and responsibilities for the governing board, the school's leadership and management team, and any other entities shown in the organization chart;

22. a staffing chart for the school's first year, and a staffing plan for the term of the charter;

23. plans for recruiting and developing school leadership and staff;

24. personnel policies and employment practices applicable to the school's officers and employees;

25. the manner in which teachers, leaders, and other school employees will be evaluated;

26. proposed governing bylaws;

27. explanations of any partnerships or contractual relationships central to the school's operations or mission;

28. the school's plans for providing transportation, food service, and all other significant operational or ancillary services;

29. policies, programs, and practices to ensure parental involvement and procedures to respond to parental complaints;

30. a detailed school start-up plan, identifying tasks, timelines and responsible individuals;

31. description of the school's financial plan and policies sufficient to permit a government audit, including financial controls and audit requirements;

32. management and accounting practices to be employed;

33. a description of the insurance coverage the school will obtain;

34. start-up and five-year budgets with clearly stated assumptions;

35. start-up and first-year cash-flow projections with clearly stated assumptions;

36. evidence of anticipated fundraising contributions, if claimed in the application; and,

37. the specific academic and other educational results to be achieved, the timelines for such achievement, and how results will be measured and assessed;

38. an agreement to provide a report at the end of each semester to parents of pupils enrolled in the school, the community, the local school board, and the state board indicating progress toward meeting the performance objectives as stated in the charter;

39. information concerning the school location and the adequacy of its facilities and equipment. Such information shall include a statement of the procedures to be followed and disposition of facilities and equipment should the charter be terminated or not renewed;

40. management and accounting practices to be employed;

41. provisions regarding liability issues;

42. assurance that the curriculum of the proposed charter school shall be focused on the intellectual domain with intellectual development defined as acquisition of discrete technical and academic skills;

43. assurance that the proposed charter school will regularly assess the academic progress of its students, including the participation of such students in the state testing programs, and the sharing of such information with parents;

44. assurance that students shall have a mastery of grade-appropriate skills before they can be recommended for promotion or promoted;

45. provisions regarding the safety and security of the school;

46. provisions regarding electronic communications by an employee of the charter school to a student enrolled at the charter school;

47. provisions regarding the inspection and operation of all fire prevention and safety equipment at the school; and

48. a plan for collecting data in accordance with R.S. 17:3911.

E. In the case of a proposed public charter school that intends to contract with a management organization for substantial educational services, management services, or both types of services, the request for proposals shall additionally require the applicants to:

1. provide evidence of the management organization's success in serving student populations similar to the targeted population, including demonstrated academic achievement as well as successful management of non-academic school functions if applicable;

2. provide a term sheet setting forth the proposed duration of the service contract; roles and responsibilities of the governing board, the school staff, and the service provider; scope of services and resources to be provided by the service provider; performance evaluation measures and timelines; compensation structure, including clear identification of all fees to be paid to the management organization; methods of contract oversight and enforcement; investment disclosure; and conditions for renewal and termination of the contract; and

3. disclose and explain any existing or potential conflicts of interest between the school governing board and proposed management organization or any affiliated business entities.

F. In the case of a public charter school proposal from an applicant that is itself or is using a management organization that currently operates one or more schools in any state or nation, the request for proposals shall additionally require the applicant to provide evidence of past performance and current capacity for growth.

G. Type 1 and Type 2 charter school applications shall describe how the charter school will serve the percentage of at-risk students defined in the Charter School Law and in Section 2713 of this bulletin.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1362 (July 2008), amended LR 37:2383 (August 2011).

**§518. BESE Pre-Opening Procedures Following Approval**

A. Following charter application approval by BESE, approved nonprofit corporations must complete pre-opening requirements developed by the department prior to executing a charter contract and prior to opening a school.

B. The department must certify completion of the pre-opening requirements to the president of the BESE prior to the execution of the charter contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) and R.S. 17:3981.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1363 (July 2008), amended LR 37:2385 (August 2011).

**§519. Local School Board Consideration of Charter Application, Awarding of Charters**

A. Local school boards shall review and formally act upon each Type 1 or Type 3 application within 90 days in the order in which it was submitted.

B. Local school boards shall carefully review each Type 1 and Type 3 charter school application they receive and may approve a charter application only after it has made a specific determination that the determine whether each proposed charter complies with the law and rules, whether the proposal is valid, complete, financially well-structured, and educationally sound, whether it provides for a master plan for improving behavior and discipline in accordance with R.S. 17:252, whether it provides a plan for collecting data in accordance with R.S. 17:3911.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) and R.S. 17:3981.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 37:2385 (August 2011).

**Chapter 7. Charter School Performance Contract**

**§701. Charter School Contract with BESE**

A. ...

B. The charter school contract shall define the performance standards to which the charter school will be held accountable and the general terms and conditions under which the charter school will operate. The charter school contract template shall include, but not be limited to, provisions regarding the establishment of the charter school; the operation of the charter school; charter school financial matters; charter school personnel; charter term, renewal and revocation; and other provisions determined necessary by BESE. The charter school contract shall also include exhibits that provide detailed information about the terms and conditions under which the school will operate, including but not limited to, the pre-opening requirements; education service provider contract, if applicable; student discipline policy; and student enrollment.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) and R.S. 17:3981.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1363 (July 2008), amended LR 37:2385 (August 2011).

**Chapter 9. Opening of Charter School**

**§901. Timeline for Charter School Opening**

A. - B. ...

C. A charter school other than a Type 5, once approved, may begin operation only in July, August, or September of a given year.

D. A charter school other than a Type 5 shall not begin operation sooner than eight months after approval of the charter school has been granted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3983.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1363 (July 2008), amended LR :37:2385 (August 2011).

**Chapter 11. Ongoing Review of Charter Schools**

**§1101. Charter School Evaluation**

A. - B.3. ...

C. BESE shall receive a report on the review of Type 2, Type 4, and Type 5 charter schools not later than January of each year. This annual review will be used in charter contract extension determinations.

1. During its renewal term, each charter school will be subject to regular site visits and contract review on a schedule established by the Department of Education.

2. A charter school under long-term renewal (five or more years), whose academic performance declines for three consecutive years, will be subject to a formal evaluation and contract review by LDOE. Based on the results of its evaluation, the department may recommend one of the following actions:

a. the charter school be placed under a Memorandum of Understanding (MOU) that outlines specific recommendations for improving performance; or

b. revocation.

D. - D.4. ...

5. Charter School's First Year of Operation (Year One)

a. In the fall of each charter school's first year of operation, the Department of Education shall provide each charter school with a pre-assessment index.

b. The pre-assessment index will consist of the test results of the students enrolled in the charter school from the immediately preceding spring state testing, where available.

5.c. - 6.a. ...

b. Assessment index year one will be reported not later than January of a charter school's second year of operation.

7. - 7.a.ii.(d).table. Repealed.

8. Charter School's Fourth Year of Operation (Year Four)

a. In each charter school's fourth year of operation, the school will be measured on the following indicators: baseline school performance score (SPS); growth school performance score (SPS); assessment index year three; and required growth.

i. The following indicators will be measured not later than January of a charter school's fourth year of operation.

(a). - (c). ...

(d). The evaluation indicator standards measured not later than January of a charter school's fourth year of operation, as applicable, based on year three data shall be as follows.

Indicator (January)	Standard
Baseline SPS	Above Academically Unacceptable Status
Growth SPS	Meet growth target as determined pursuant to Bulletin 111
Assessment Index Year Three	Above Academically Unacceptable Status or growth of 15 points from pre-assessment index

ii. - ii.(c). table. Repealed.

b. Type 5 charter schools transferred to the recovery school district (RSD) pursuant to R.S. 17:10.5 will also be evaluated pursuant to R.S. 17:10.5 no later than January of the Type 5 charter school's fourth year of operation.

9. Charter School's Fifth Year of Operation (Year Five)

a. In each charter school's fifth year of operation, the school will be measured on the following indicators: baseline school performance score (SPS), growth school performance score (SPS), and assessment index year four.

i. The following indicators will be reported not later than January of a charter school's fifth year of operation:

(a). - (c). ...

(d). The evaluation indicator standards reported not later than January of a charter school's fifth year of operation based on year four data shall be as follows.

Indicator (January)	Standard
Baseline SPS	Above Academically Unacceptable Status
Growth SPS	Meet growth target as determined pursuant to Bulletin 111
Assessment Index Year Four	Above Academically Unacceptable Status or growth of 20 points from pre-assessment index

10. - 10.a.ii. ...

iii. Assessment Index. In the fall of each year of operation for charter schools, an assessment index will be determined for the charter school until the charter school receives an SPS pursuant to Bulletin 111. The assessment index received in a particular year will be based on assessment data from the previous year aggregated as defined in Bulletin 111.

D.10.b. - E.2. ...

3. Financial performance shall be assessed annually using the financial risk assessment framework approved and adopted by BESE. The financial risk assessment shall:

a. monitor the following external conditions encountered by charter operators that, if not addressed, could render the school financially vulnerable; and

i. student enrollment factors:

(a). declines in public school enrollment;

ii. trends in fiscal conditions:

(a). total current expenditures per pupil is 90 percent or less of state average: short-term reaction of school systems is to reduce expenditures—this serves as indicator of ability of school system to cut expenditures if required;

(b). relationship between accountability scores and per pupil expenditure: another measure of ability of school system to cut expenditures and expected outcome on accountability scores;

iii. future obligations:

(a). school systems with 15 percent above the state average of school employees projected to retire within the next five years: indicates that over 45 percent of school system personnel has 15 or more years of service;

iv. status of business certification of business official:

(a). is current business official in process of being certified under R.S.17:84.2;

b. identify the following internal factors that could lead to weaknesses or challenges in the financial operations of an operator.

i. Level 1—Fiscal Management/Behavior. School systems meeting the criteria in this category have problems because they have not implemented financial management practices that are designed to ensure good internal controls in their systems; therefore, if not addressed the risk is higher that these smaller problems could lead to more severe problems in the future.

(a). Submittal of General Fund Budget Form A by September 30 as required by law (submittal of annual operating budget by July 31 for charter schools).

(b). Submittal of final AFR by October 31.

(c). Audit Opinion—internal control on government auditing standards.

(d). Single audits—consecutive audit findings.

(e). Known material fraud in any program.

ii. Level 2—Identified Problems Having Fiscal Impact. Items in this category may indicate the mismanagement of a program to the degree that funds must be repaid (referred to as a questioned cost). The school system is required to repay these funds to the federal government, unless a CAROI agreement is established by the LDE. This agreement allows for funds to remain in the school system to correct the systematic problem and enhance the program. These types of problems can be corrected but must be directly addressed and closely monitored to ensure this does not continue.

(a). Questioned costs from A-133—single audit report.

(b). Questioned costs from program monitoring review.

(c). Questioned costs from fiscal monitoring review.

iii. Level 3—Auditing Outcomes. Items in this category may indicate that the independent auditor has found a critical problem in these areas of a school system's financial operations. The severity of the problem will be indicated by the type of the opinion issued. Problems such as these can be corrected but must be directly addressed by the school system and then closely monitored.

(a). Audit Opinion—general purpose financial statements.

(b). Audit Opinion—schedule of expenditures of federal programs.

(c). Audit Opinion—compliance with laws and regulations on federal programs.

iv. Level 4—Problems with Balanced Budgets and Fund Balances. Items in this category may indicate there could be, or there already exists, cash flow problems in a school system. These types of problems must be addressed immediately or the school system could be at risk of insolvency.

(a). General Fund Deficit Spending. General fund deficit spending may be acceptable in certain instances. In such instances correspondence from the district is necessary to justify the deficit spending.

(b). General fund balance as a percentage of general fund revenues.

v. Level 5—Major Events

(a). Going Concern Opinion. Items in this category indicate that problems already exists in a school system that put the entity at risk of being able to continue operations.

(b). New School System or Major Event. A school system categorized in this manner requires LDE to closely monitor the development and implementation of appropriate systems, policies, and procedures to ensure successful provision of educational services to students as a result of being newly formed or having experienced a special event.

4. The financial risk assessment shall be the primary factor in determining the financial performance of a charter school.

5. The financial risk assessment shall result in one of the following actions.

a. No Action. The school's fiscal health is determined to be satisfactory and does not require continued departmental monitoring; or

b. Monitoring. The department will monitor specific aspects of the financial risk assessment, in order to assure continued progress in areas that have been problematic in the past; or

c. Dialogue. The department will conduct a detailed review of the school's finances and financial practices; follow-up may include, but not be limited to, discussions between department staff and school leadership regarding issues of major concern, a formal site visit, or recommended action by BESE in order to address deficiencies.

6. Charter schools in their first year of operation shall be provided a financial practices self-assessment in order to determine the extent to which the school is positioned for strong financial performance.

F. - F.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1363 (July 2008), amended LR 37:2385 (August 2011).

### **Chapter 13. Charter Term**

#### **§1303. Third Year Review**

A. ...

B. Each Type 2, Type 4, and Type 5 charter school's comprehensive report and its third year evaluation shall be used to determine if the school will receive a two-year extension, as follows.

#### **1. Contract Extension**

a. Each charter school shall provide a comprehensive report to its chartering authority at the end of the third year, to be considered in addition to the academic, financial, and legal and contractual performance data collected by the department for the charter school's first three years. If such report and performance data reveal that the charter school is achieving the following goals and objectives, the board shall, by January of the school's fourth year, permit the charter school to complete the remainder of its initial five-year term:

i. a financial risk assessment evaluation that has not been deemed to require "dialogue" as set forth in §1101.E; and

ii. no violation of legal or contractual standards as defined in §1101.F.3; and

iii. one of the following student performance standards:

(a). SPS Year Three is above AUS status;

(b). Assessment Index Year Three is above AUS status; or

(c). Assessment Index increase of 15 points from the pre-assessment index.

b. A Type 5 charter school authorized pursuant to R.S. 17:10.5 meeting the standards set forth in Subparagraph B.1.a of this Section, but not meeting any standard set forth in R.S. 17:10.5, will receive a one-year extension.

b.i. - c. Repealed.

#### **2. Schools That Fail to Meet Extension Standards**

a. If a charter school fails to meet any of the standards set forth in Paragraph B.1 of this Section, BESE may, at the superintendent's recommendation, take one of the following actions:

i. grant the school a one year probationary extension with conditions or other required actions;

ii. revoke the school's charter if the school has committed any of the violations listed in §1701.

#### **3. Contract Probation**

a. A charter school placed on contract probation shall:

i. comply with the conditions set forth in the extension determination; and

ii. submit progress reports as required by the department outlining the progress it has made towards improving its performance.

b. The department shall notify the charter operator in writing within 10 days of the decision to place the school on probation, indicate the reasons for probation, and describe the specific actions or outcomes required.

i. If a school placed on contract probation has resolved all of the issues related to its initial probation status, BESE may, at the superintendent's request, vote to remove probationary status.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1367 (July 2008), amended LR 37:2387 (August 2011).

#### **§1305. Fourth Year Review of Charter Schools on**

##### **Contract Probation**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3992.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1367 (July 2008), repealed LR 37:2387 (August 2011).

**Chapter 15. Charter Renewal**

**§1501. Renewal of Charter**

A. - B. ...

C. No charter shall be renewed unless the charter operator seeking renewal can demonstrate, at a minimum, using standardized test scores, improvement in the academic performance of students over the term of the charter school's existence.

D. A charter may be renewed for additional periods of not less than three nor more than ten years after thorough review by the approving chartering authority of the charter school's operations and compliance with charter requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981 and R.S. 17:3992.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1367 (July 2008), amended LR 37:2388 (August 2011).

**§1503. Charter Renewal Process and Timeline**

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

2. The state's assessment and accountability program assigns performance labels to all schools based on school performance scores. Consistent with the philosophy of rewarding strong performance and providing incentives for schools to strive for continual improvement, the renewal terms for BESE-authorized charter schools will be linked to each school's performance label (based on the school's performance on the state assessment in the year prior to the renewal application) in accordance with the table that follows.

School Performance Labels and Maximum Charter Renewal Terms	
Performance Label	Maximum Renewal Term
F	3 years
D	3 Years
C	5 Years
B	10 Years
A	10 years

3. A school will be allowed a maximum of two consecutive three-year renewal terms.

4. - 5.a. ...

b. a charter school in its initial term that is in AUS status, but which met its growth target at the end of year four or which has a growth performance score of above AUS may be renewed for a term not to exceed three years;

c. a charter school in its initial term that is in AUS status, but where fewer than 30 percent of its enrolled grades are testable under state accountability, may be renewed for a term not to exceed three years;

d. if, in the superintendent's judgment, the non-renewal of an AUS status charter school in its initial charter term would likely require many students to attend lower performing schools, and the superintendent recommends its renewal, the charter may be renewed for a term not to exceed three years. Prior to recommending such renewal, the superintendent must demonstrate that efforts to find a new, high-quality operator for the school were unsuccessful;

e. the school has made 20 points of assessment index growth from its pre-assessment index.

**C. Financial Performance**

1. Each charter operator is required to engage in financial practices, financial reporting, and financial audits to ensure the proper use of public funds and the successful fiscal operation of the charter school. The charter school shall be evaluated using the financial risk assessment as defined by BESE. The financial risk assessment shall:

a. monitor external conditions encountered by charter operators that, if not addressed, could render the school financially vulnerable; and

b identify internal factors that could lead to weaknesses or challenges in the financial operations of an operator.

2. The financial risk assessment shall be the primary factor in determining the financial performance of a charter school.

3. A charter contract will not be renewed if the charter has failed to demonstrate over the term of its charter, the fundamental ability to operate a fiscally sound charter school, as evidenced by repeated failure to adhere to the financial standards articulated in this Section.

4. BESE Standards for Financial Performance. BESE shall, reduce the renewal term by a year for any charter school that has been found to require "monitoring" or "dialogue" as part of their most recent fiscal risk assessment. No term shall be less than three years.

5. A charter contract will be non-renewed if the charter has failed to demonstrate over the term of its charter, the fundamental ability to operate a fiscally sound charter school, as evidenced by repeated failure to adhere to the financial standards articulated above.

**D. Legal and Contract Performance**

1. BESE will include a charter school's compliance with its statutory, regulatory, and contractual obligations and all reporting requirements in its renewal decision. BESE's evaluation shall be based on, but not limited to, the following indicators.

Indicator	Standard
Special Education and ELL Program	Pursuant to applicable law and regulation and contract provisions
Student Enrollment	Pursuant to applicable law and regulation and contract provisions
Student Discipline	Pursuant to applicable law and regulation and contract provisions
Health and Safety	Pursuant to applicable law and regulation and contract provisions
Governance	Pursuant to applicable law and regulation and contract provisions
Facilities	Pursuant to applicable law and regulation and contract provisions

2. - 3. ...

**E. Initial Renewal for BESE-Authorized Charter Schools**

1. In October of each charter school's fifth year, the charter operator will be required to submit a request for renewal to BESE in accordance with LDOE guidelines.

2. Not later than January of the charter school's fifth year, the department will make a recommendation to BESE

about the disposition of any school whose contract is up for renewal. The basis for the recommendation will be the charter school's student, financial, and legal and contractual performance during years one through four of the charter contract.

3. Based on the school's academic, financial, and contractual performance, the department may recommend one of three actions:

a. renewal for the maximum term identified in the School Performance Labels and Maximum Charter Renewal Terms table;

b. renewal for a shorter term (based on deficiencies in financial and/or legal/contract performance, although not to be less than three years); or

c. non-renewal.

4. The State Superintendent of Education may recommend a corrective action plan as a condition for renewal for any charter school that qualifies for renewal, but fails to fully meet any performance standards.

5. A recommendation for non-renewal may also include a recommendation that a new charter provider operate the school.

F. - F.2. ...

3. Not later than January of the charter school's final contract year, the department will make a recommendation to BESE about the disposition of any school whose contract is up for renewal. The basis for the recommendation will be the charter school's student, financial, legal and contractual performance during its current charter contract.

4. Based on the school's academic, financial, and legal and contractual performance over the current charter contract term, the department may recommend one of the following actions:

a. renewal for the maximum term identified in the School Performance Labels and Maximum Charter Renewal Terms table, with the addition of one year to the charter term for every year that the school's growth target was met, not to exceed a maximum term of ten years;

b. renewal for a shorter term (based on deficiencies in financial and/or legal/contract performance); or

c. non-renewal.

5. A recommendation for non-renewal may also include a recommendation that a new charter provider operate the school.

G. Automatic Renewal of Charter Schools

1. A charter school which has met or exceeded for the three preceding school years the benchmarks established for it in accordance with the school and district accountability system, has demonstrated growth in student academic achievement for the three proceeding schools years, and has had no significant audit findings during the term of the charter agreement shall be deemed a high-performing school, and such school's charter shall be automatically renewed.

2. A charter school that meets the following conditions shall be automatically renewed and shall be exempted from the renewal process requirements listed in Subsection E or F of this Section, as appropriate:

Current School Performance Label	Other requirements (must meet all)	Eligibility
F	Not applicable	Not eligible for automatic renewal
D	<ul style="list-style-type: none"> <li>• 10 points of academic growth in past 2 years</li> <li>• no violations of legal or contractual standards, as defined in §1101.F.3.; and</li> <li>• No issues requiring "Dialogue" in two most recent Financial Risk Assessments</li> </ul>	Will be automatically renewed
C	<ul style="list-style-type: none"> <li>• 5 points of academic growth in past 2 years</li> <li>• no violations of legal or contractual standards, as defined in §1101.F.3.; and</li> <li>• No issues requiring "Dialogue" in two most recent Financial Risk Assessments</li> </ul>	Will be automatically renewed
B or A	<ul style="list-style-type: none"> <li>• Academic improvement over charter term</li> <li>• no violations of legal or contractual standards, as defined in §1101.F.3.; and</li> <li>• No issues requiring "Dialogue" in two most recent Financial Risk Assessments</li> </ul>	Will be automatically renewed

3. The automatic renewal term shall be in line with the terms specified in Paragraph B.2 of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981 and R.S. 17:3992.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:479 (March 2010), amended LR 37:2388 (August 2011).

**Chapter 18. Voluntary Relinquishment of a BESE-Authorized Charter**

**§1801. Voluntary Relinquishment of a BESE-Authorized Charter**

A. If the operator or board of a BESE authorized charter school determines that it can no longer operate the charter school, it shall relinquish the charter to BESE at least 90 days prior to the beginning of the next school year.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3981 and R.S. 17:3992.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 37:873 (March 2011), amended LR 37:2389 (August 2011).

**Chapter 19. Amendments to BESE-Authorized Charters**

**§1903. Material Amendments for BESE-Authorized Charter Schools**

A. - D. ...

E. BESE shall not approve a material amendment to a school's charter regarding Paragraphs A.3 and A.4 of this Section unless the following conditions have been met, as determined by the department:

1. no violations of legal or contractual standards, as defined in §1101.F.3; and

2. is not in "dialogue" with the department, as defined in §1101.E.6.c; and

3. one of the following student performance standards:



a. the school's most recent performance label was a "C" or higher; or

b. not allowing the expansion into new grades or acceptance of greater numbers of students would result in students attending a lower performing school; or

c. the school has made ten points of academic growth over the previous two years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3992.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1369 (July 2008), amended LR 37:873 (March 2011), LR 37:2389 (August 2011).

## **Chapter 27. Charter School Recruitment and Enrollment**

### **§2701. Students Eligible to Attend**

A. - D. ...

E. Beginning with the 2011-2012 school year, each elementary and middle charter school, other than a Type 2 charter school, may request from and be granted by its chartering authority the authority to give preference in its enrollment procedures to students residing within the neighborhood immediately surrounding the school. The geographic boundaries of the neighborhood immediately surrounding such school shall be determined by the school's chartering authority. Type 5 charter schools shall not reserve more than 20 percent of spots in each grade level served for such enrollment preference.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3973, R.S. 17:3981, R.S. 17:10.5, R.S. 17:10.7, and R.S. 17:1990.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1373 (July 2008), amended LR 37:873 (March 2011), LR 37:2390 (August 2011).

Catherine R. Pozniak  
Executive Director

1108#028

## **RULE**

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

Bulletin 741—Louisiana Handbook for School Administrators—Uniform Grading Policy (LAC 28: CXV.2302)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 741—Louisiana Handbook for School Administrators*: §2302. Uniform Grading Policy. This policy requires and designates a statewide uniform grading scale for all local education agencies. This policy was required by Act 701 of the 2010 Regular Legislative Session. Title 28

## **EDUCATION**

### **Part CXV. Bulletin 741—Louisiana Handbook for School Administrators**

#### **Chapter 23. Curriculum and Instruction**

##### **§2302. Uniform Grading Policy**

A. LEAs shall use the following uniform grading system for students enrolled in all grades K-12 for which letter grades are used.

<b>Grading Scale for Regular Courses</b>	
<b>Grade</b>	<b>Percentage</b>
A	100-93
B	92-85
C	84-75
D	74-67
F	66-0

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7(29)

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 37:2390 (August 2011).

Catherine Pozniak  
Executive Director

1108#029

## **RULE**

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

Nonpublic Bulletin 741—Louisiana Handbook for Nonpublic School Administrators (LAC 28:LXXIX.2109, 2305, 2309, 2324, 2325, and 2337)

Editor's Note: This Rule is being repromulgated to correct a citation error. The original Rule may be viewed on pages 2142-2144 of the July 20, 2011 edition of the *Louisiana Register*.

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Nonpublic Bulletin 741—Louisiana Handbook for Nonpublic School Administrators*: §2109. High School Graduation Requirements, §2305. Art, §2309. Dance, §2324. Media Arts, §2325. Music, and §2337. Theatre Arts. These policy revisions provide additional courses that can be taken in the visual and performing arts. These revisions were made to update the course offerings in the arts and to provide a new program of study in the media arts.

## **Title 28**

### **EDUCATION**

#### **Part LXXIX. Nonpublic Bulletin 741—Louisiana Handbook for Nonpublic School Administrators**

##### **Chapter 21. Curriculum and Instruction**

###### **Subchapter C. Secondary Schools**

###### **§2109. High School Graduation Requirements**

A. - B. ...

C. Minimum Requirements (effective for incoming freshmen 1999-2000 to 2008-2009)

1. English—4 units, shall be English I, II, and III, and English IV or Business English.

2. Mathematics—3 units.

a. Effective for incoming freshmen 2005-2006 and beyond, all students must:

i. complete one of the following:

(a). algebra I (1 unit); or

(b). algebra I-pt. 1 and algebra I-pt. 2 (2 units);

or

(c). integrated mathematics I (1 unit);

ii. the remaining unit(s) shall come from the following:

- (a). integrated mathematics II;
- (b). integrated mathematics III;
- (c). geometry;
- (d). algebra II;
- (e). financial mathematics;
- (f). advanced mathematics-pre-calculus;
- (g). advanced mathematics-functions and statistics;
- (h). pre-calculus;
- (i). calculus;
- (j). probability and statistics;
- (k). discrete mathematics.

3. Science—3 units, shall be the following:
- a. 1 unit of biology;
  - b. 1 unit from the following physical science cluster:
    - i. physical science;
    - ii. integrated science;
    - iii. chemistry I;
    - iv. physics I;
    - v. physics of technology I;
  - c. 1 unit from the following courses:
    - i. aerospace science;
    - ii. biology II;
    - iii. chemistry II;
    - iv. earth science;
    - v. environmental science;
    - vi. physics II;
    - vii. physics of technology II;
    - viii. agriscience II;
    - ix. an additional course from the physical science cluster; or
    - x. a locally initiated science elective;
  - d. students may not take both integrated science and physical science;
  - e. agriscience I is a prerequisite for agriscience II and is an elective course.

4. Social Studies—3 units, shall be American history; one-half unit of civics, one-half unit of free enterprise or one full unit of civics or AP American government; and one of the following:

- a. world history;
- b. world geography;
- c. western civilization; or
- d. AP European history.

5. Health and Physical Education—2 units, shall be health and physical education I and health and physical education II, or adapted physical education for eligible special education students.

Note: The substitution of JROTC is permissible. A maximum of four units may be used toward graduation.

6. Electives (including a maximum of four credits in religion)—8 units.

7. Total—23 units.

D. - D.4. ...

E. For incoming freshmen in 2009-2010 and beyond who are completing the Louisiana Core 4 Curriculum, the minimum course requirements shall be the following:

- 1. English—4 units, shall be English I, II, III, and IV.
- 2. Mathematics—4 units, shall be:
  - a. algebra I (1 unit) or algebra I-Pt. 2;

- b. geometry;
- c. algebra II;
- d. the remaining unit shall come from the following:

- i. financial mathematics;
- ii. math essentials;
- iii. advanced mathematics-pre-calculus;
- iv. advanced mathematics-functions and statistics;
- v. pre-calculus;
- vi. calculus;
- vii. probability and statistics;
- viii. discrete mathematics; or
- ix. a locally-initiated elective approved by BESE as a math substitute.

3. Science—4 units, shall be:
- a. biology;
  - b. chemistry;
  - c. two units from the following courses:
    - i. physical science;
    - ii. integrated science;
    - iii. physics I;
    - iv. physics of technology I;
    - v. aerospace science;
    - vi. biology II;
    - vii. chemistry II;
    - viii. earth science;
    - ix. environmental science;
    - x. physics II;
    - xi. physics of technology II;
    - xii. agriscience II;
    - xiii. anatomy and physiology; or
    - xiv. a locally initiated elective approved by BESE as a science substitute.

(a). Students may not take both integrated science and physical science.

(b). Agriscience I is a prerequisite for agriscience II and is an elective course.

4. Social Studies—4 units, shall be:

- a. 1 unit of civics or AP American government, or 1/2 unit of civics or AP American government and 1/2 unit of free enterprise;

- b. 1 unit of American history;
- c. 1 unit from the following: world history, world geography, western civilization, or AP European history;

- d. 1 unit from the following:
  - i. world history;
  - ii. world geography;
  - iii. western civilization;
  - iv. AP European history;
  - v. law studies;
  - vi. psychology;
  - vii. sociology;
  - viii. African American studies; or
  - ix. religion I, II, III, or IV.

5. Health and Physical Education—2 units.

6. Foreign Language—2 units, shall be 2 units from the same foreign language or 2 speech courses.

7. Arts—1 unit, shall be one unit of art (§2305), dance (§2309), media arts (§2324), music (§2325), theatre, or fine arts survey.

- 8. Electives—3 units.
- 9. Total—24 units.

F. For incoming freshmen in 2009-2010 and beyond who are completing the Louisiana Basic Core Curriculum, the minimum course requirements for graduation shall be the following.

1. English—4 units, shall be English I, II, III, and IV or senior applications in English.

2. Mathematics—4 units, shall be:

a. algebra I (1 unit) or algebra I-pt. 1 and algebra I-pt. 2 (2 units);

b. geometry;

c. the remaining units shall come from the following:

i. algebra II;

ii. financial mathematics;

iii. math essentials;

iv. advanced mathematics-pre-calculus;

v. advanced mathematics-functions and statistics;

vi. pre-calculus;

vii. calculus;

viii. probability and statistics;

ix. discrete mathematics; or

x. a locally initiated elective approved by BESE as a math substitute.

3. Science—3 units, shall be:

a. biology;

b. 1 unit from the following physical science cluster:

i. physical science;

ii. integrated science;

iii. chemistry I;

iv. physics I;

v. physics of technology I;

c. 1 unit from the following courses:

i. aerospace science;

ii. biology II;

iii. chemistry II;

iv. earth science;

v. environmental science;

vi. physics II;

vii. physics of technology II;

viii. agriscience II;

ix. anatomy and physiology;

x. an additional course from the physical science cluster; or

xi. a locally initiated elective approved by BESE as a science substitute.

(a). Students may not take both integrated science and physical science.

(b). Agriscience I is a prerequisite for agriscience II and is an elective course.

4. Social Studies—3 units, shall be:

a. 1 unit of civics and/or AP American government, or 1/2 unit of civics or AP American government and 1/2 unit of free enterprise;

b. 1 unit of American history;

c. 1 unit from the following:

i. world history;

ii. world geography;

iii. western civilization; or

iv. AP European history.

5. Health and Physical Education—2 units.

6. Electives—8 units.

7. Total—24 units.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2351 (November 2003), amended LR 30:2776 (December 2004), LR 31:3081 (December 2005), LR 34:2099 (October 2008), LR 36:2849 (December 2010), LR 37:2390 (August 2011).

Catherine R. Pozniak  
Executive Director

1108#027

## RULE

### Department of Health and Hospitals Board of Examiners for Speech-Language Pathology and Audiology

Speech Pathology and Audiology  
LAC 46:LXXV.Chapters 1, 3, 5, and 7)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 37:2656(c), the Louisiana Board of Examiners for Speech-Language Pathology and Audiology has amended the rules, regulations and procedures to reflect current requirements set forth by universities to obtain undergraduate and graduate degrees, to clarify the Sections regarding supervision requirements, to implement rules specific to individuals who reapply after their license has been lapsed for ten years, to revise the current code of ethics to have language specific to masters level practitioners and language specific to bachelors level practitioners. Lastly, the board is requesting other “housekeeping” type amendments to revise the language, but not the intent of the rule.

#### Title 46

#### Professional and Occupational Standards

#### Part LXXV. Speech Pathology and Audiology

#### Chapter 1. General Rules

#### §103. Definitions

A. ...

\*\*\*

*Cooperating Program*—an approved agency of a regionally accredited training institution.

\*\*\*

*Nine Months of Full-Time Supervised Postgraduate Professional Employment/Experience*—is defined as a minimum of thirty-six weeks of full-time supervised professional employment/experience.

\*\*\*

*Provisional Assistant Licensee*—an individual who meets the qualifications established in R.S. 37: 2659(E) and works under the direct supervision of a licensed speech-language pathologist and performs only those duties specified in §117. This person has completed a minimum of 100 of 225 supervised clinical practicum hours and is working to complete the remaining hours on-the-job and/or through a regionally accredited educational institution or its cooperating programs.

\*\*\*

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 14:705 (October 1988), amended LR 22:346 (May 1996), LR 27:197 (February 2001), LR 28:1781 (August 2002), LR 30:2307 (October 2004), LR 33:2192 (October 2007), LR 37:2392 (August 2011).

**§107. Qualifications for Licensure**

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

\* \* \*

G. Coursework Requirements: Speech-Language Pathology Assistant and Provisional Speech-Language Pathology Assistant

1. ...

2. If the bachelor's degree is not in speech-language pathology, the degree program should include the following core coursework. A total of 41 hours shall be obtained in the following areas.

3. Basic Requirements:

- a. Biological or Physical Sciences 6 semester hours
- b. Mathematics or Statistics 6 semester hours
- c. Psychology/Sociology/Multicultural Studies (some combination) 6 semester hours

4. Basic Professional Courses:

- a. American Phonetics 3 semester hours
- b. Anatomy and Physiology of the Speech and Hearing Mechanism 3 semester hours
- c. Normal Speech and Language Acquisition 3 semester hours
- d. Repealed.

5. Speech and Language Disorders:

- a. Introduction to Communication Disorders 3 semester hours
- b. Articulation Disorders 3 semester hours
- c. Language Disorders 3 semester hours
- d. Repealed.
- e. Repealed.
- f. Repealed.
- g. Clinical Practicum in Communication Disorders 2 semester hours (additional credit may be obtained as an elective)

6. Hearing and Hearing Disorders:

- a. Introduction to Audiology\* 3 semester hours
- b. Repealed.

H. - H.3.a.ii. ...

iii. the remaining 35 hours may be obtained in the areas of speech, language or hearing disorders. A maximum of 5 of these hours may be in the area of audiology. It is recommended that a minimum of 20 hours be in articulation.

b. ...

4. Provisional Speech-Language Pathology Assistant License

a. A minimum of 100 clinical practicum hours which have been obtained through a regionally accredited educational institution or its cooperating programs as defined in §107.I.3 is required.

i. The first 75 hours of direct patient/client contact shall be obtained in the following categories:

- (a). minimum of 20 hours in speech disorders;

(b). minimum of 20 hours in language disorders;  
(c). the remaining 35 hours may be obtained in the areas of speech, language or hearing disorders. A maximum of 5 of these hours may be in the area of audiology. It is recommended that a minimum of 20 hours be in articulation.

b. The additional 125 hours required to upgrade to the Speech-Language Pathology Assistant License shall be obtained within three years of the date of issuance of the provisional assistant license and may be obtained by completing the remaining hours on-the-job and/or through a regionally accredited educational institution or its cooperating programs. Those hours obtained through supervised on-the-job training must consist of on-site in-view observation hours and will only be accepted from the date that the application for license is acknowledged to have been received by the board.

c. A provisional speech-language pathology assistant may request inactive status if unable to find employment in the area of speech-language pathology and may defer the remaining time of the three-year period to complete the licensure requirements.

H.4.c.i. - K.3. ...

4. If an individual has never held a license to practice audiology or speech-language pathology in another state, and if the degree program was completed greater than ten years from the date of application, the passing score on the specialty area examination for speech/language pathology or audiology must have been obtained within the last five years.

L. - L.1.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 14:706 (October 1988), amended LR 22:346 (May 1996), LR 27:197 (February 2001), repromulgated LR 27:1690 (October 2001), amended LR 28:1781 (August 2002), LR 30:2308 (October 2004), LR 33:2192 (October 2007), LR 37:2393 (August 2011).

**§109. Application Procedures**

A. - C. ...

D. The initial license fee submitted to this board shall be paid by check, money order, or credit card.

E. - J. ...

K. Applicants who have not obtained licensure within one year of having submitted the application shall be deemed to have abandoned the application, resulting in mandatory reporting to the appropriate federal databank. An applicant may request a withdrawal of the application subject to review and approval by the board.

L. Individuals holding an unrestricted speech-language pathology or audiology license from another state shall be allowed to practice in Louisiana for five consecutive days within each renewal period upon proof of current licensure submitted to the board office 10 days prior to the scheduled activity.

M. When there is probable cause to believe that an applicant practiced illegally in Louisiana as a speech-language pathologist, speech-language pathology assistant and/or audiologist, the board may offer a consent agreement and order which will grant the individual a license, subject to the following specified terms and conditions.

1. Within 90 days of the date of the consent agreement and order, the applicant shall take and pass an open book examination regarding R.S. 37:2650-2666, the board's rules, regulations and procedures, and ethical questions or within 10 months of the date of the consent agreement and order, the applicant shall complete not fewer than five hours of continuing education in the area of ethics.

a. Open book test fee shall be \$30. The retest fee shall be \$10 per section.

b. Applicants have 4 1/2 hours to complete all sections of the test.

c. The open book examination or any section may be re-taken anytime within the 90 days.

d. The applicant may be required to appear before the board following completion of the continuing education in ethics to answer questions regarding the continuing education.

e. Notice of the consent order and agreement shall be published.

f. If the applicant fails to successfully complete all requirements set forth in the above paragraphs, the applicant's license shall be suspended without further notice until the board receives and accepts documentation of the applicant's completion of the consent order and agreement requirements.

N. Applications for licensure will be denied for individuals who are in default on the repayment of any loan guaranteed in accordance with R.S. 17:3023(A)(8) and R.S. 37:2951(A)(E).

O. Temporary Registration During a Declared Public Health Emergency

1. - 7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 14:707 (October 1988), amended LR 22:352 (May 1996), LR 27:199 (February 2001), LR 28:1974 (September 2002), LR 30:2311 (October 2004), LR 33:2193 (October 2007), LR 37:2393 (August 2011).

### **§113. Additional Requirements for International Applicants/Speakers of English as a Second Language**

A. - B. ...

C. Because the essence of the practice of speech-language pathology and audiology is communication, an applicant whose primary language is not English shall submit a passing score on a nationally recognized English proficiency examination as approved by the board, and make a personal appearance before the board or its designees before a license may be issued. An English proficiency assessment shall be conducted by the board or its designees as a condition for licensure. At the board's discretion, the license may be conditionally granted subject to an English remediation plan and/or restrictions on practice.

D. The clinical observation and clinical practicum for a speech-language pathologist educated outside the United States must consist of at least 400 patient contact hours, to include:

1. at least 25 hours in supervised observation prior to the clinical practicum. Patient contact hours in excess of the required minimum may be substituted for the required 25 hours of supervised observation;

2. at least 375 patient contact hours in speech-language pathology. Practicum experiences must be:

a. across the scope of practice in speech-language pathology;

b. with clients across the lifespan;

c. across the range of clinical severity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 14:707 (October 1988), amended LR 22:354 (May 1996), LR 27:201 (February 2001), LR 30:2311 (October 2004), LR 37:2394 (August 2011).

### **§115. Requirements to Upgrade License**

A. - B.3. ...

C. The provisional speech-language pathology assistant shall submit the following to upgrade his/her license status:

1. proof of 225 supervised clinical practicum hours shall be on file in the board's office. Only on-site, in-view supervision hours and/or university practicum hours may be counted towards the 225 hours;

C.2. - G. ...

H. Audiologists who hold an audiology license but are completing the coursework or practicum requirements for registration as a dispenser shall follow the supervision requirements as specified in §131.H, and shall submit the board's Form 100 at the time of renewal. The board's Form 100 and the upgrade fee shall be submitted to upgrade license status.

I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 22:349 (May 1996), amended LR 27:197 (February 2001), LR 28:1971 (September 2002), LR 30:2312 (October 2004), LR 33:2194 (October 2007), LR 37:2394 (August 2011).

### **§117. Duties: Speech-Language Pathology Assistant License and Provisional Speech-Language Pathology Assistant License**

A.1. All duties performed by the assistant speech-language pathology licensee or provisional speech-language pathology assistant licensee shall be assigned by a licensed speech-language pathologist and shall be supervised in accordance with the rules and regulations specified by the board. Caseload assignments shall be consistent with the knowledge base and training of the licensee for the performance of the following tasks:

a. conduct speech-language screenings and assessments without interpretation, following specified protocols as developed by the supervising speech-language pathologist. An assistant may not administer a test if the publisher's examiner requirements dictate administration by a graduate-degreed individual. All screening and assessment reports shall be cosigned and interpreted by the supervising speech-language pathologist;

b. ...

c. provide direct treatment which is within the level of training and experience as prescribed by the supervising speech-language pathologist to a caseload of patients/clients who demonstrate communication disorders. Supervision of treatment shall be in accordance with the rules and regulations specified by the board;

d. follow treatment plans or protocols as developed and documented by the supervising speech-language pathologist;

e. - g. ...

h. speech-language pathology assistants may participate in parent conferences, case conferences, interdisciplinary team conferences, and research projects. Provisional speech-language pathology assistants may participate in these activities only with the supervising speech-language pathologist.

2. - 2.a.viii. ...

3. The speech-language pathology assistant and the provisional speech-language pathology assistant shall not perform any clinical task without the knowledge and approval of the supervising speech-language pathologist.

4. Failure to comply with these rules and regulations may result in disciplinary action against the assistant and/or the supervising speech-language pathologist.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 30:2312 (October 2004), amended LR 33:2194 (October 2007), LR 37:2394 (August 2011).

### §119. Fees

A. The board collects the following fees, which are non-refundable.

1. - 10. ...

11. NSF or returned check—\$40.

12. - 17.d. ...

18. An additional fee may be charged for credit card transactions in accordance with state treasury rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 14:706 (October 1988), amended LR 22:350 (May 1996), LR 27:197 (February 2001), repromulgated LR 27:1691 (October 2001) amended LR 30:2313 (October 2004), LR 33:2195 (October 2007), LR 37:2395 (August 2011).

### §121. License Renewals

A. - B. ...

C. Licensees shall list on their renewal form the licensees i.e., provisional speech-language pathologists, provisional audiologists, restricted speech-language pathologists, restricted audiologists, speech-language pathology assistants, or provisional speech-language pathology assistants, and aides that they are supervising.

D. - I.2. ...

3. A licensee whose license lapsed on November 1, and applies for reinstatement after June 30, of the following year, is subject to the initial license fee and the requirements of §121.J.3.

J. Conditional Renewal or Reinstatement

1. - 2. ...

3. Licensees who have allowed their license to lapse for a period of ten years or greater, and do not hold a current audiology or speech-language pathology license in another state, must submit a passing score on the educational testing service's specialty area examination for speech-language pathology or audiology, as applicable to the license being sought, achieved no more than five years prior to the submission of the request for reinstatement.

4. Licensees who allow their license to lapse (November 1) shall submit documentation of completion of five clock hours of continuing education (maximum of 25 hours) in the area of licensure for each year that the license has lapsed in addition to meeting the license requirements enumerated in R.S. 37:2650 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 14:707 (October 1988), amended LR 22:351 (May 1996), LR 27:198 (February 2001), LR 28:1972 (September 2002), LR 30:2314 (October 2004), LR 33:2195 (October 2007), LR 37:2395 (August 2011).

### §123. Continuing Education Requirements

A. - H. ...

\*\*\*

I. Acceptable continuing education sponsors and activities:

1. board-sponsored activities;

2. presentations in the area of communication disorders sponsored by individual professional practitioners and/or professional organizations such as American Academy of Audiology (AAA), American Speech-Language-Hearing Association (ASHA), Louisiana Speech-Language-Hearing Association (LSHA), Speech Pathologists and Audiologists in Louisiana Schools (SPALS), Louisiana Society for Hearing Aid Specialists, etc.;

3. ...

4. meetings of related professional organizations (e.g., Council for Exceptional Children, Orton Dyslexia Society);

5. college courses in the area of licensure taken for credit or official audit;

6. distance learning (video conferences, telephone seminars and Internet courses sponsored by individual private practitioners, universities, schools, clinics, state agencies, hospitals, professional organizations, or related professional organizations);

7. ...

8. publication of an article in a peer-reviewed journal for the year in which it was published;

9. audio, video and other media from the LBESPA library as well as ASHA-approved and AAA-approved continuing education media (maximum of five hours);

10. the presenting licensee may count 1 1/2 times the value of an activity the first time it is presented to allow for preparation time (example: a three hour workshop = 4 1/2 hours). The activity will count for the actual hour value for each subsequent presentation of the same activity;

11. Teaching at the college level in the area of communication disorders is not acceptable.

J. Pre-Approval Policy

1. Pre-approval is required for continuing education events that do not meet the requirements as listed under §123.I.1-11, and pre-approval of continuing education events is required in those situations where it is unclear whether or not the topic is relevant to the profession or will further a professional's expertise in a particular area.

2. - 6. ...

K. Recording of Continuing Education Activities

1. Licensees shall record all continuing education activities as prescribed by the board and submitted at the time of renewal.

2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 22:351 (May 1996), amended LR 27:199 (February 2001), LR 28:1973 (September 2002), LR 30:2314 (October 2004), LR 33:2196 (October 2007), LR 37:2395 (August 2011).

**§125. Supervision Requirements for Restricted License, Provisional Speech-Language Pathology License and Provisional Audiology License**

A. ...

B. A supervising speech-language pathologist must have a minimum of one year of full-time professional speech-language pathology experience following the postgraduate professional/employment experience. Full-time employment in a school system for the school year is considered to meet this requirement.

C. An individual may not be supervised by a provisional licensee, restricted licensee, or assistant licensee.

D. Supervision must involve the personal and direct participation of the supervisor in order for the supervisor to monitor, observe, evaluate, and make suggestions for improvement regarding the supervisee's professional employment.

E. Restricted licensees, provisional speech-language pathology licensees and provisional audiology licensees must submit a supervisory agreement signed by the supervisor and supervisee as prescribed by the board. The form must be submitted to the board by the supervisee within 30 days of employment and submitted annually at the time of renewal. If there is a change in supervisor(s) at any time, a new supervisory agreement must be submitted to the board within 30 days of the change in supervision. If there are multiple supervisors for the same supervisee, all supervisors must sign the supervisory agreement.

F. Speech-language pathologists or audiologists may share the supervision responsibility for Provisional or Restricted licensees, but each supervising speech-language pathologist or audiologist shall complete and submit the necessary supervision forms.

G. Supervisory records, including supervision logs and other documentation of supervision, shall be maintained by both the supervisor and supervisee for a period of three years. Documentation of supervision may be requested by the board.

H. The direct supervision of the licensee, whether employed full-time or part-time, shall include 12 monitoring activities annually.

1. At least four shall be on-site, in-view observations divided between the areas of diagnostics and management. The on-site, in-view observations must be equal to or greater than a total of four hours. Alternative methods may include conferences, audio and videotape recordings, review of written records, staffings and discussions with other persons who have participated in the licensee's training.

2. For 12-month employees, one on-site, in-view observation shall be conducted each quarter.

3. For nine-month employees, two on-site, in-view observations shall occur in each semester. If the nine-month employment is extended for a period of time, additional on-

site, in-view as well as alternative methods of supervision must occur.

I. Documentation of supervision shall be submitted annually at the time of license renewal on Form 100 provided by the board.

J. Licensees shall complete all supervision requirements consistent with the license held and immediately thereafter submit appropriate supervision forms to the board office along with a written request for license upgrade and the upgrade fee. The licensee shall remain under supervision until the upgrade has been approved by the board.

K. The board will accept supervision provided out-of-state by an individual licensed or ASHA-certified in the area of practice. Supervision must be documented on Form 100.

1. Restricted licensees, provisional speech-language pathology licensees and provisional audiology licensees who have not worked in Louisiana, may submit their clinical fellowship report as proof of supervision that was carried out during the license period. Otherwise licensees must submit at the time of license renewal, appropriate proof of supervision consistent with Louisiana supervision requirements.

L. Licensees who are not working in the field of speech-language pathology and/or audiology and who hold a license requiring supervision, shall submit a notarized statement at the time of license renewal attesting to the fact that they did not work in the profession during the license period.

M. All costs of supervision shall be borne by the licensee or his/her employer, but in no event will those costs be borne by the board.

N. When supervision requirements have not been met in accordance with §125, licensees shall complete additional months of supervision to replace months of incomplete supervision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 14:707 (October 1988), amended LR 22:352 (May 1996), LR 27:199 (February 2001), LR 28:1974 (September 2002) LR 30:2315 (October 2004), LR 33:2196 (October 2007), LR 37:2396 (August 2011).

**§127. Supervision Requirements for Speech-Language Pathology Assistant and Provisional Speech-Language Pathology Assistant**

A. A supervising speech-language pathologist must have a minimum of one year of full-time professional speech-language pathology experience following the postgraduate professional/employment experience. Full time employment in a school system for the school year is considered to meet this requirement.

B. Prior to the initiation of supervision of an assistant or provisional assistant, training in the area of supervision is strongly recommended.

C. The supervision requirements specified in these guidelines are minimum requirements. It is the responsibility of the speech-language pathologist to design and provide a supervision system that protects patient/client care and maintains the highest possible standards of quality.

D. Supervision must involve the personal and direct participation of the supervisor in order for the supervisor to monitor, observe, evaluate, and make suggestions for improvement regarding the supervisee's employment.

E. The supervisor is responsible for ensuring that the assistant does not make decisions regarding evaluation, management and future disposition of clients.

F. The supervisor is responsible for initial consultation with the assistant regarding coursework and practicum experiences prior to caseload assignment. The supervising speech-language pathologist shall assign only those tasks for which the assistant has been trained.

G. Decision-making regarding specification of on-going treatment protocol and necessary modifications, is the responsibility of the supervisor. The level of supervision required is considered the minimum necessary to ensure appropriate patient/client care.

H. The supervising speech-language pathologist shall be readily available for consultation with the assistant licensee. This includes personal contact, telephone, pager, or other means of communication.

I. Speech-language pathology assistants and provisional speech-language pathology assistants must submit a supervisory agreement signed by the supervisor and supervisee as prescribed by the board. The form must be submitted to the board by the supervisee within 30 days of employment and submitted annually at the time of renewal. If there is a change in supervisor(s) at any time, a new supervisory agreement must be submitted to the board within 30 days of the change in supervision. If there are multiple supervisors for the same supervisee, all supervisors must sign the supervisory agreement.

J. Speech-language pathologists may share the supervision responsibility for speech-language pathology assistants or provisional speech-language pathology assistants, but each supervising speech-language pathologist shall complete and submit the necessary supervision forms.

K. Supervisory records, including supervision logs and other documentation of supervision, shall be maintained by both the supervisor and supervisee for a period of three years. Documentation of supervision may be requested by the board.

L. The board will accept supervision given out-of-state by a licensed or ASHA certified speech-language pathologist or audiologist in the area of licensure. Licensees must submit at the time of license renewal, appropriate proof of supervision consistent with Louisiana supervision requirements.

M. Assistants who are not working in the field of speech-language pathology shall submit a notarized statement at the time of license renewal attesting to the fact that they did not work in the profession during the license period.

N. Although more than one speech-language pathologist may provide supervision of an assistant licensee and provisional assistant licensee, at no time may a licensed speech-language pathologist supervise or be listed as a supervisor for more than three assistant or provisional assistant licensees. When multiple supervisors are used, the supervisors are encouraged to coordinate and communicate with each other.

O. Provisional speech-language pathology assistants and speech-language pathology assistants must undergo on-site in-view supervision as well as alternative methods of supervision in every work setting in which the licensee is employed.

P. Documentation of supervision shall be submitted annually at the time of license renewal on Form 200 provided by the board.

#### Q. Supervision Requirements for the Speech-Language Pathology Assistant

1. A minimum of one clock hour of on-site, in-view supervision shall be completed in the primary work setting each week for each licensee. If the assistant is employed in more than one work setting, additional on-site, in-view supervision must occur in the secondary work setting.

2. A minimum of one clock hour of alternative supervision methods shall be completed each week for each licensee. These methods should include, but are not limited to:

- a. specifying protocols for speech-language screenings and assessments conducted by the assistant licensee;
- b. specifying protocols for hearing screenings conducted by the assistant licensee;
- c. approving treatment plans or protocols and documenting approval;
- d. monitoring patient/client progress toward meeting established objectives;
- e. monitoring, scheduling, charting and data collection;
- f. directing maintenance of equipment;
- g. directing research projects, in-service training and public relations programs;
- h. conducting telephone conferences.

3. If circumstances prohibit a supervisor from completing the minimum supervision requirements (§127.Q.1 and 2) in a given week, the remaining supervision shall be completed the following week in conjunction with the required supervision hours for that week.

4. When the supervising speech-language pathologist is unavailable for supervision for more than one week, arrangements shall be made for another qualified supervisor or the speech-language pathology assistant shall be transferred to other duties.

#### 5. Speech-Language Pathology Assistant Full-Time and Part-Time Supervision Requirements

Hours Worked	Required Supervision On-Site, In-View	Required Supervision Alternative Method
21-40 hours	1 hour/week	1 hour/week
20 hours or less	1 hour/every 2 weeks	1 hour/every 2 weeks

6. Assistant licensees shall be supervised only by a speech-language pathologist licensed under the provisions of R.S. 37:2659(A) with the exception of hearing screenings which may be supervised by an audiologist, licensed under the provisions of R.S. 37:2659. An individual may not be supervised by a provisional licensee or restricted licensee.

#### R. Supervision Requirements for the Provisional Speech-Language Pathology Assistant

1. A minimum of three clock hours of on-site, in-view supervision shall be completed in the primary work setting each week for each licensee. If the provisional speech-language pathology assistant is employed in more than one work setting, additional on-site, in-view supervision must occur in the secondary work setting.



2. A minimum of two clock hours of alternative supervision methods shall be completed each week for each licensee.

3. These methods should include, but are not limited to:

- a. specifying protocols for speech-language screenings and assessments conducted by the assistant licensee;
- b. specifying protocols for hearing screenings conducted by the assistant licensee;
- c. approving treatment plans or protocols and documenting approval;
- d. monitoring patient/client progress toward meeting established objectives;
- e. monitoring scheduling, charting and data collection;
- f. directing maintenance of equipment;
- g. directing research projects, in-service training and public relations programs;
- h. conducting telephone conferences.

4. If extenuating circumstances prohibit a supervisor from completing the minimum supervision requirements (§127.R.1 and 2) in a given week, the remaining supervision shall be completed the following week in conjunction with the required supervision hours for that week.

5. When the supervising speech-language pathologist is out for more than one week, arrangements shall be made for another qualified supervisor or the provisional speech-language pathology assistant shall be transferred to other duties.

6. When supervision requirements have not been met, in accordance with §127 licensees shall complete additional months of supervision to replace months of incomplete supervision.

7. Provisional speech-language pathology assistant full-time and part-time supervision requirement:

Hours Worked	Required Supervision On-Site, In-View	Required Supervision Alternative Method
21-40 hours	3 hours/week	2 hours/week
20 hours or less	1.5 hours/every 2 weeks	1 hour/every 2 weeks

8. Provisional assistant licensees shall be supervised by a speech-language pathologist licensed under the provisions of R.S. 37:2659(A) with the exception of hearing screenings which may be supervised by an audiologist, licensed under the provisions of R.S. 37:2659. An individual may not be supervised by a provisional licensee or a restricted licensee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 14:707 (October 1988), amended LR 22:353 (May1996), LR 27:200 (February 2001), repromulgated LR 27:1691 (October 2001), amended LR 30:2316 (October 2004), LR 33:2197 (October 2007), LR 37:2396 (August 2011).

**§131. Hearing Aid Dispensing**

A. - F.1.b. ...

c. a basic audiological test battery conducted in a soundtreated environment within the preceding six month period, including:

- i. pure tone air and bone conduction testing;

- ii. speech reception threshold;
- iii. word recognition testing;
- iv. appropriate tolerance testing;
- vi. Repealed;

d. middle ear measurements shall also be obtained when indicated.

2. - 3. ...

4. Audiologists shall conduct a post-fitting evaluation that includes functional gain measurements conducted in a soundtreated environment and/or real ear measurements unless the patient's physical conditions prohibit accomplishment of these procedures.

F.5. - H.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 22:353 (May 1996), amended LR 27:201 (February 2001), LR 28:1975 (September 2002), LR 30:2317 (October 2004), LR 33:2198 (October 2007), LR 37:2398 (August 2011).

**Chapter 3. Impaired Practitioner Program**

**§301. Purpose and Scope**

A. Upon voluntary disclosure or proof that an applicant or licensee has provided professional services while under the influence of alcohol or has used narcotic or controlled dangerous substances or other drugs in excess of therapeutic amounts or without valid medical indication, the board may offer the applicant or licensee the Impaired Practitioner Program in order to receive or renew the professional license. Participation in the program may be required as a prerequisite to initial application for licensure or continued practice in accordance with the conditions of any consent order, compliance hearing, or adjudication hearing. At no time while participating in the impaired practitioner's program shall an individual supervise other licensees.

B. The board may utilize its discretionary authority to require or exclude specific components of this program for participants based upon determination of the nature and severity of the impairment. Participation in the Impaired Practitioner Program may consist of all or part of the following components:

1. - 3. ...

4. mandatory weekly attendance at self-help meetings, such as Alcoholics Anonymous or Narcotics Anonymous, for a specified period of time. Submission of a monthly log which meets the board's specifications will be required:

B.4.a. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 30:2319 (October 2004), amended LR 37:2398 (August 2011).

**Chapter 5. Procedural Rules**

**§501. Investigation of Complaints**

A. - F. ...

G. Following an investigation, the designated investigator shall report to the board and make a recommendation for either dismissal of the complaint or proceeding to an informal hearing, consent order, or formal hearing.

H. - L. ...

M. The board shall have the authority to delegate to the designated investigator any alleged violations of the Speech-Language Pathology and Audiology Act, R.S. 37:2650 et seq., and any alleged violations of any and all rules and regulations adopted by the board pursuant thereto, prior to board action on those alleged violations. If requested by the board, the designated investigator shall submit to the board the complete investigation file. Final authority for appropriate action rests solely with the board including formal notification to the complainant and the licensee.

N. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 17:373 (April 1991), amended LR 22:356 (May 1996), LR 30:2320 (October 2004), LR 33:2200 (October 2007), LR 37:2398 (August 2011).

### **§503. Compliance Hearings**

A. ...

B. A licensee whose license has lapsed shall be entitled to a compliance hearing provided that the licensee requests one in writing within 10 days after receipt of the notice for the lapsed license

C. The purpose and intent of the compliance hearing is to provide a forum for the applicant or licensee to present documentary evidence, in the form of affidavits, public records, official records, letters, etc., along with testimony under oath to establish that the applicant or licensee does, in fact, meet the lawful requirements for issuance of a license or the retention of the license. The board shall have the authority to administer oaths, hear the testimony, and conduct the hearing. The applicant or licensee may be represented by counsel, or may represent her/himself.

D. In any compliance hearing, the burden of proof shall rest with the applicant or licensee.

E. Within 30 days after the compliance hearing, the board shall forward its final decision, including specific reasons thereof, by certified mail, return receipt requested, to the applicant or licensee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 17:374 (April 1991), amended LR 22:357 (May 1996), LR 27:201 (February 2001), LR 30:2321 (October 2004), LR 37:2399 (August 2011).

### **§507. General Procedural Rules for Hearings**

A. The board is empowered to issue subpoenas upon receipt of a written request from the licensee or attorney general at least 15 days in advance of any scheduled hearing. The board shall issue said subpoenas upon receipt of said written request and receipt of any and all fees for subpoenas as provided for in §119.A.15 promulgated by the board.

B. - E. ...

F. The procedures as delineated by the Louisiana Department of Justice consistent with the Administrative Procedure Act, R.S. 49:950 et seq., regarding the conducting of hearings and proceedings shall be implemented. A copy will be provided to any interested party involved with the hearing upon receipt by the board of a written request therefore.

G. - I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 17:374 (April 1991), amended LR 22:358 (May 1996), LR 27:201 (February 2001), LR 28:1975 (September 2002), LR 30:2322 (October 2004), LR 37:2399 (August 2011).

## **Chapter 7. Code of Ethics**

### **§701. Preamble**

A. - B. ...

C. Principles of ethics form the underlying moral basis for the Code of Ethics. Individuals shall observe these principles as affirmative obligations under all conditions of professional activity.

D. ...

E. Rules of Ethics for Audiology, Provisional Audiology, Speech-Language Pathology, Provisional Speech-Language Pathology, and Restricted Speech-Language Pathology Licensees

1.a. - k. ...

1. Individuals shall not discontinue service to those they are serving without providing reasonable notice and other resources.

2. Principle of Ethics II. Individuals shall honor their responsibility to achieve and maintain the highest level of professional competence and performance consistent with prevailing practice standards.

a. Individuals shall provide all services competently. Individuals shall engage in only those aspects of the professions that are within the scope of their practice and competence, considering their level of licensure, education, training and experience.

b. Individuals shall hold the appropriate qualifications for the area(s) in which they are providing or supervising professional services.

c. - f. ...

3. Principle of Ethics III. Individuals shall honor their responsibility to the public by promoting public understanding of the professions, by supporting the development of services designed to fulfill the unmet needs of the public, and by providing accurate information in all communications involving any aspect of the professions.

a. ...

b. Individuals shall not misrepresent the credentials of assistants, support personnel, students, or any others under their supervision and shall inform those they serve professionally of the name and professional credentials of persons providing services.

c. Individuals shall not participate in professional activities that constitute a conflict of interest.

d. Individuals shall not misrepresent diagnostic information, services rendered, or products dispensed, or engage in any scheme or maneuver to defraud in connection with obtaining payment or reimbursement for such services or product.

e. Individuals' statements to the public shall provide accurate information about the nature and management of communication disorders, about the professions, about professional services and about products.

f. Individuals' statements to the public advertising, announcing and marketing their professional services, reporting research results, and promoting products shall

adhere to prevailing professional standards and shall not contain misrepresentations.

4. Principle of Ethics IV. Individuals shall honor their responsibilities to the professions and their relationships with colleagues, students, and members of other professions and disciplines. Individuals shall uphold the dignity and autonomy of the professions, maintain harmonious interprofessional and intraprofessional relationships, and accept the professions' self-imposed standards.

a. ...

b. Individuals shall not engage in dishonesty, fraud, deceit, or misrepresentation.

c. Individuals shall not engage in any form of harassment, power abuse, or any other form of conduct that adversely reflects on the professions or on the individual's fitness to serve persons professionally.

d. Individuals shall not engage in sexual activity with a patient/client or students over whom they exercise professional authority.

e. Individuals shall assign credit only to those who have contributed to a publication, presentation, or product. Credit shall be assigned in proportion to the contribution and only with the contributor's consent.

f. Individuals shall reference the source when using other persons' ideas, research, presentations, or products in written, oral, or any other media presentation or summary.

g. Individuals' statements to colleagues about professional services, research results, and products shall adhere to prevailing professional standards and shall contain no misrepresentations.

h. Individuals shall not provide professional services without exercising independent professional judgment, regardless of referral source or prescription.

i. Individuals shall not discriminate in their relationships with colleagues, students, and members of other professions and disciplines on the basis of race or ethnicity, gender, age, religion, national origin, sexual orientation, or disability.

j. Individuals shall not violate these principles and rules, nor attempt to circumvent them.

k. Individuals shall inform the board of any violations of this Code of Ethics.

l. Individuals shall cooperate fully with the board on matters of professional conduct relative to this Code of Ethics.

F. Rules of Ethics for Speech-Language Pathology Assistant and Provisional Speech-Language Pathology Assistant Licensees

1. Principle of Ethics I. Licensees shall honor their responsibility to hold paramount the welfare of persons they serve and provide services with honesty and compassion and shall respect the dignity, worth, and rights of those served. The licensee shall take all reasonable precautions to avoid harm to the individual served.

a. Individuals shall not discriminate in the delivery of services on the basis of race or ethnicity, gender, age, religion, national origin, sexual orientation, or disability.

b. Individuals shall not perform clinical tasks without the knowledge and approval of the supervising speech-language pathologist nor shall the licensee interpret test results, guarantee results, make referrals, discharge

patients/clients, or provide patient/client or family counseling.

c. Individuals may practice by telecommunication (i.e., telepractice, telehealth, e-health) under the supervision of a fully licensed individual, provided that both the supervisor and the supervisee hold the appropriate license for the jurisdiction in which the service is rendered and delivered.

d. Individuals shall maintain adequate records of services rendered and products dispensed and shall allow access to these records when appropriately authorized.

e. Individuals shall not reveal, without authorization, any professional or personal information about the person served, unless required by law to do so, or unless doing so is necessary to protect the welfare of the person or of the community.

f. Individuals shall not charge for services not rendered, nor shall they misrepresent, in any fashion, services rendered or products dispensed.

g. Individuals shall not carry out teaching, or research activities in a manner that constitutes an invasion of privacy, or that fails to inform persons fully about the nature and possible effects of these activities, affording all persons informed free-choice and participation.

h. Individuals whose services are adversely affected by substance abuse or other health-related conditions shall seek professional assistance and, where appropriate, withdraw from the affected areas of practice.

2. Principle of Ethics II. Individuals shall honor their responsibility to achieve and maintain the highest level of competence and performance.

a. Individuals shall provide all services competently. Individuals shall engage in only those aspects of service provision that are within the scope of their practice and competence, considering their level of licensure, education, training and experience.

b. Individuals shall hold the appropriate qualifications for the area(s) in which they are providing services.

c. Individuals shall engage in lifelong learning throughout their careers.

d. Individuals shall not provide services unless appropriately supervised.

e. Individuals shall not provide services for which the licensee has not been properly prepared.

f. Individuals shall ensure that all equipment used in the provision of services is in proper working order and is properly calibrated.

3. Principle of Ethics III. Individuals shall honor their responsibility to the public by providing accurate information in all communications.

a. Individuals shall not misrepresent their credentials, competence, education, training or experience.

b. Individuals shall not participate in professional activities that constitute a conflict of interest.

c. Individuals shall not misrepresent information or services rendered, or engage in any scheme or maneuver to defraud in connection with obtaining payment or reimbursement for services.

4. Principle of Ethics IV. Individuals shall honor their responsibilities and their relationships with colleagues and members of other professions and disciplines. Individuals

shall maintain harmonious interprofessional and intraprofessional relationships.

a. Individuals shall not engage in dishonesty, fraud, deceit, or misrepresentation

b. Individuals shall not engage in any form of harassment, power abuse, or any other form of conduct that adversely reflects on service delivery or on the individual's fitness to serve persons.

c. Individuals shall not engage in sexual activity with a patient/client.

d. Individuals shall assign credit only to those who have contributed to a publication, presentation, or product. Credit shall be assigned in proportion to the contribution and only with the contributor's consent.

e. Individuals shall reference the source when using other persons' ideas, research, presentations, or products in written, oral, or any other media presentation or summary.

f. Individuals' statements to colleagues about services, research, or products shall adhere to prevailing standards and shall contain no misrepresentations.

g. Individuals shall not discriminate in their relationships with colleagues and members of other professions and disciplines on the basis of race or ethnicity, gender, age, religion, national origin, sexual orientation, or disability.

h. Individuals shall not violate these principles and rules, nor attempt to circumvent them.

i. Individuals shall inform the board of any violations of this Code of Ethics.

j. Individuals shall cooperate fully with the board on matters of professional conduct relative to this Code of Ethics.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 17:370 (April 1991), amended LR 22:360 (May 1996), LR 30:2324 (October 2004), LR 33:2201 (October 2007), LR 37:2399 (August 2011).

Emily Efferson  
Administrator

1108#005

## RULE

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

#### Clinical Laboratory Personnel, Licensure and Certification (LAC 46:XLV.3509)

The Louisiana State Board of Medical Examiners (board), pursuant to the authority of the Louisiana Medical Practice Act, R.S. 37:1261-1292, and in accordance with the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., has amended its administrative rules governing licensure and certification of clinical laboratory personnel (CLP), LAC 46:XLV, Subpart 2, Chapter 35, Subchapter B, Section 3509. The amendments are set forth below.

## Title 46 PROFESSIONAL AND OCCUPATIONAL STANDARDS

### Part XLV. Medical Professions

#### Subpart 2. Licensure and Certification

#### Chapter 35. Clinical Laboratory Personnel

#### Subchapter B. Licensure and Certification Requirements

#### §3509. Qualifications for Licensure and Certification

A. Clinical Laboratory Scientist-Generalist. To be eligible for licensure as a clinical laboratory scientist-generalist an applicant, in addition to satisfaction of the procedural requirements for licensure under this Chapter, shall have successfully completed an approved nationally recognized certification examination for such clinical laboratory personnel classification as developed and administered:

1. on or before June 30, 2012, by one of the following organizations or their successor organizations:

a. American Society of Clinical Pathologists (ASCP);

b. National Certification Agency (NCA);

c. American Medical Technologists (AMT); or

d. International Society of Clinical Laboratory Technology (ISCLT) provided, however, that an applicant for licensure as a CLS-G who has, prior to January 1, 1995, successfully completed the certification examination for such clinical laboratory personnel classification developed and administered by the United States Department of Health, Education, and Welfare (HEW) (predecessor to the Department of Health and Human Services) shall also be eligible for licensure as a clinical laboratory scientist-generalist;

2. after June 30, 2012, by the ASCP.

B. - B.2.g. ...

C. Clinical Laboratory Scientist-Technician. To be eligible for licensure as a clinical laboratory scientist-technician, an applicant, in addition to satisfaction of the procedural requirements for licensure under this Chapter, shall have successfully completed an approved nationally recognized certification examination for such clinical laboratory personnel classification, as developed and administered:

1. on or before June 30, 2012, by one of the following organizations or their successor organizations:

a. American Society of Clinical Pathologists (ASCP);

b. National Certification Agency (NCA);

c. American Medical Technologists (AMT); or

d. International Society of Clinical Laboratory Technology (ISCLT).

2. after June 30, 2012, by the ASCP.

D. - F.2.h. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(5) and R.S. 37:1311-1329.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 20:1286 (November 1994), amended, LR 37:597 (February 2011), LR 37:2401 (August 2011).

Robert L. Marier, M.D.  
Executive Director

1108#011

**RULE**

**Office of the Governor  
Board of Architectural Examiners**

**Titles, Firm Names, and Assumed Names  
(LAC 46:I.Chapter 15)**

Under the authority of R.S. 37:144(C) and in accordance with the provisions of R.S. 49:951 et seq., the Board of Architectural Examiners ("LSBAE") amended LAC 46:I Chapter 15 pertaining to the titles, firm names, and assumed names which architects and architectural firms may use in their practice of architecture. The Rules clarify the existing rules in an attempt to provide guidance to architects and architectural firms in their architectural practice. In addition, the Rules will allow (a) a non-resident entity to retain its non-resident identity in Louisiana under certain conditions (§1535, which is new), and (b) an architect or architectural firm which believes that the requirements of the rules will be unduly burdensome or impractical to seek an exemption therefrom (§1537, which is new).

**Title 46  
PROFESSIONAL AND OCCUPATIONAL  
STANDARDS  
Part I. Architects**

**Chapter 15. Titles, Firm Names, and Assumed Names**

**§1501. Misleading and Confusing Names Prohibited**

A. The statutory authorization for architects to offer to the public the practice of architecture and the rendering of architectural services is not an authorization to hold out as an architect any person who is not registered by the board. An architect shall not practice architecture under an assumed, fictitious or corporate name that is misleading as to the identity, responsibility, or status of those practicing thereunder or is otherwise false, fraudulent, misleading, or confusing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners, LR 29:568 (April 2003), amended LR 37:2402 (August 2011).

**§1505. Use of Term "Architect," "Architecture," or "Architectural"**

A. Whenever the term *architect*, *architecture*, or *architectural* is used in a firm name, or whenever a firm includes its name in any listing of architects or of firms rendering architectural services, the name of at least one Louisiana licensed architect followed by the title *architect* must be included either as a part of the firm title itself or at least one Louisiana licensed architect must be identified as an architect on the firm letterhead and any website.

Allowed	Not Allowed
Smith & Jones, Architecture & Planning	Smith & Jones, Architecture & Planning
John Smith, Architect	(unless Smith and Jones are both licensed by the board to practice architecture in Louisiana)
Smith & Jones, Architecture & Engineering	Smith & Jones, Architecture & Engineering
John Smith, Architect	(unless Smith and Jones are both licensed by the board to practice architecture in Louisiana)
Design Professionals	Design Professionals
Architecture & Planning	
John Smith, Architect	
Heritage Architectural Services	
John Smith, Architect	

Allowed	Not Allowed
John Smith, Architect, and Associates	Architecture & Planning Heritage Architectural Services

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners, LR 29:568 (April 2003), amended LR 37:2402 (August 2011).

**§1507. Use of the Plural Term "Architects"**

A. If the firm title indicates that the firm contains two or more architects, the names of at least two Louisiana licensed architects followed by the title *architect* must be included either as a part of the firm title itself or at least two Louisiana licensed architects must be identified as architects on the firm letterhead and any website. An architectural firm which loses an architect or architects so that it may no longer use the plural term "architects" is required to change its name as soon thereafter as is reasonably possible, which change shall occur no later than one year from the departure of the architect or architects.

Allowed	Not Allowed
Communications Architects John Smith, Architect Jack Jones, Architect Smith & Jones, Architectural Services (if Smith and Jones are both licensed by the board to practice architecture in Louisiana)	Communications Architects

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners, LR 29:568 (April 2003), amended LR 37:2402 (August 2011).

**§1509. Firm Name Which Includes Names of Licensed Architect or Architects Only**

A. A firm name which includes only the name or names of a licensed architect or architects engaged in the active practice of architecture is not required to include the name of a licensed architect followed by the title "architect" as a part of the firm title itself. However, if the firm title indicates that the firm is a sole proprietorship or that only one architect is a member of the firm, the identity of the architect shall be shown on the firm letterhead and any website. If the firm title indicates that the firm contains two or more architects, at least two architects shall be identified as such on the firm letterhead and any website.

Allowed	Not Allowed
Smith & Jones, Architects (if Smith and Jones are both licensed by the board to practice architecture in Louisiana)	Smith & Jones, Architects (if Jones is not licensed by the board)

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners, LR 29:563 (April 2003), amended LR 37:2402 (August 2011).

**§1511. Use of "AIA"**

A. The use of "AIA," in and of itself, is not an acceptable substitution for the title "architect" on any listing, publication, announcement, letterhead, business card,

website or sign used by an individual practicing architecture in connection with his practice where such title is required.

Allowed	Not Allowed
John Smith, Architect John Smith, Architect, AIA	John Smith, AIA (if the title "architect" is required)

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners, LR 29:569 (April 2003), amended LR 37:2402 (August 2011).

**§1513. Use of the Term "Associate"**

A. An architect may only use the word "associate" in the firm title to describe a full time officer or employee of the firm. The plural form may be used only when justified by the number of associates who are full time firm employees. An architectural firm which loses an associate or associates so that it may no longer use the plural form is required to change its name as soon thereafter as is reasonably possible, which change shall occur no later than one year from the departure of the associate or associates. Identification of the associates in the firm title, listing, publication, letterhead, or announcement is not required.

Allowed	Not Allowed
John Smith & Associates, Architects (if John Smith is licensed by the board and the firm employs two or more associates as defined herein)	John Smith & Associates, Architects (if the firm employs only one associate as defined herein)

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners, LR 29:569 (April 2003), amended LR 37:2403 (August 2011).

**§1515. Sole Proprietorship, Partnership, Group, Association, or Limited Liability Company**

A. The firm name of any form of individual, partnership, corporate, limited liability company, group, or associate practice must comply with all of the rules set forth in this Chapter.

Allowed	Not Allowed
John Smith, Architect John Smith, AIA, Architect John Smith, Architect, AIA John Smith & Associates, Architect (if John Smith is licensed by the board to practice architecture in Louisiana and the firm employs two or more associates as defined in the rules) Smith & Jones, Architect & Engineer (if John Smith is licensed by the board to practice architecture in Louisiana) Smith & Jones, Architects & Engineer (if Smith and Jones are both licensed by the board to practice architecture in Louisiana)	Smith & Jones, Architects & Engineers (if either Smith or Jones is not licensed by the board to practice architecture in Louisiana) Smith & Jones, Architects (if either Smith or Jones is not licensed by the board to practice architecture in Louisiana)

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners, LR 29:569 (April 2003), amended LR 37:2403 (August 2011).

**§1517. Professional Architectural Corporations**

A. The corporate name of a professional architectural corporation registered with this board must comply with R.S. 12:1088.

B. The corporate name of a professional architectural corporation may include an acronym such as "PAC," "APAC," or "APC" as an acceptable substitute for one of the suffixes listed in R.S. 12:1088.

Allowed	Not Allowed
Smith & Jones, A Professional Architectural Corporation Smith & Jones, APAC Smith & Jones, Architects, A Professional Architectural Corporation Smith & Jones, Architects, APAC Heritage Architects, A Professional Architectural Corporation Heritage Architects, APC	Smith & Jones, Inc. Smith & Jones, A Professional Interior Architectural Corporation

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners, LR 29:570 (April 2003), amended LR 37:2403 (August 2011).

**§1521. Fictitious Name**

A. For the purpose of these rules, a fictitious name is any name other than the real name or names of an individual. Any individual, partnership, corporation, limited liability company, group, or association may practice architecture under a fictitious name provided the name complies with all of the rules of this Chapter.

Allowed	Not Allowed
Heritage Architecture John Smith, Architect Architectural Design John Smith, Architect Architectural Design Consultants John Smith, Architect Jack Jones, Architect Heritage Architects, A Professional Corporation	Heritage Architecture Architectural Design Architectural Design Consultants John Smith, Architect

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners, LR 29:570 (April 2003), amended LR 37:2403 (August 2011).

**§1523. Practicing in a Firm with Other Professionals**

A. An architect who practices in a firm with one or more engineers, land surveyors, landscape architects, interior designers, or other professionals in an allied profession is permitted to use in the firm title a phrase describing the professions involved such as "architect and engineer," "architects, engineers, and surveyors," etc. provided:

1. the title does not hold out to the public as an architect any person who is not registered by the board;
2. the name of any allied professional in the firm title is practicing in accordance with the applicable statutes and

regulations that govern the practice of that allied profession; and

3. the title complies with all the rules of this Chapter.

Allowed	Not Allowed
Smith & Jones, Architect & Engineer John Smith, Architect Smith & Jones, Architects & Engineers John Smith, Architect Jack Jones, Architect	Smith & Jones, Architect & Engineer (if neither Smith nor Jones is an architect licensed by the board)

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners, LR 29:570 (April 2003), amended LR 37:2403 (August 2011).

**§1525. Deceased or Retired Member Predecessor Firms**

A. An architect may include in the firm name the real name or names of one or more living, deceased, or retired members of the firm, or the name of a predecessor firm in a continuing line of succession. The status of any deceased or retired member must be clearly shown on the firm letterhead and website by use of the words “retired” or “deceased” or by showing the years of the member’s birth and death. Upon the retirement or death of a firm member, the name of the firm should be changed as soon as reasonably possible, which change shall occur no later than one year following the retirement or death.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners, LR 29:570 (April 2003), amended LR 37:2404 (August 2011).

**§1531. Business Cards**

A. The business card of an architect should comply with all of these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners, LR 29:571 (April 2003), amended LR 37:2404 (August 2011).

**§1533. Limited Liability Company**

A. The name of a limited liability company registered with the board must comply with R.S.12:1306 and include the words "limited liability company" or “professional limited liability company,” or the abbreviation "L.L.C."; “P.L.L.C.”, or "L.C.”.

Allowed	Not Allowed
Smith & Jones, Architects, Limited Liability Company (if Smith and Jones are both licensed architects) Smith & Jones, Architects, Professional Limited Liability Company (if Smith and Jones are both licensed architects) Smith & Jones, Architects, L.L.C. (if Smith and Jones are both licensed architects) Smith & Jones, Architects, P.L.L.C. (if Smith and Jones are both licensed architects)	Smith & Jones, Architects (if the entity is a limited liability company)

Allowed	Not Allowed
Smith & Jones, Architects, L.C (if Smith and Jones are both licensed architects)	

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners, LR 29:571 (April 2003), amended LR 37:2404 (August 2011).

**§1535. Non-Resident Firms**

A. A non-resident corporation or limited liability company legally engaged in the practice of architecture in the jurisdiction of its origin shall have the right to retain its non-resident identity upon obtaining a certificate of registration for practicing architecture in Louisiana, provided its identity is in full compliance with the jurisdiction of its origin and the entity is in full compliance with all of the requirements for practicing architecture in Louisiana.

B. A non-resident partnership or other entity legally engaged in the practice of architecture in the jurisdiction of its origin shall have the right to retain its non-resident identity in Louisiana, provided its identity is in full compliance with the jurisdiction of its origin and the entity is in full compliance with all of the requirements for practicing architecture in Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners, LR 37:2404 (August 2011).

**§1537. Exemptions**

A. If an architect or architectural firm believes that the requirements of this Chapter are unduly burdensome or impractical because of the large number of architects employed, or for any other reason, it shall request in writing an exemption from the board.

B. The request for an exemption shall be made before any name which does not fully comply with the requirements of these rules is used, and it shall fully explain why the architect or architectural firm believes that the requirements of this Chapter are unduly burdensome or impractical.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners, LR 37:2404 (August 2011).

Mary “Teeny” Simmons  
Executive Director

1108#007

**RULE**

**Office of the Governor  
Board of Home Inspectors**

Licensing, Education, Standards of Practice and Code of Ethics (LAC 46:XL.115, 121, 325, and 501)

The Board of Home Inspectors has amended LAC 46:XL.115, 121, 325, and 501 in accordance with the provisions of the Administrative Procedures Act, R.S. 49:950 et seq., and the Louisiana Home Inspector Licensing

Law, R.S. 37:1471 et seq. The text is has been amended to correct typographical errors, and to provide new procedures and guidelines for continuing education instructors and students.

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

**Part XL. Home Inspectors**

**Chapter 1. General Rules**

**§115. Licensing Applications; Forms; Terms; Renewals; Inactive Status**

A. - D. ...

E. A licensee may hold inactive status by maintaining license renewals and continuing education requirements, but all insurance requirements are waived provided no home inspections are performed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475-1477, and R.S. 37:1479.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2740 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 30:1687 (August 2004), LR 36:2858 (December 2010), LR 37:2405 (August 2011).

**§121. Continuing Education; Instructors**

A. As a condition of license renewal, an inspector must certify completion of at least 20 hours of continuing education during the previous licensing period, in courses approved by the board. No more than 10 hours of continuing education credit may be carried over into the following year. Board-approved continuing education instructors may be given continuing education credit for course preparation and other activities as set forth in Paragraph F.3, below.

B. Continuing Education Courses

1. The same continuing education course may be taken only once for continuing education credit during any two year period, unless otherwise approved by the board.

2. For each license period the board may specify mandatory subject matter for one course, such course to be not less than two or more than four credit hours. The remaining courses shall be elective courses covering subject matter to be chosen by the licensee and meeting all other criteria specified in this Chapter.

3. Each course shall last at least one hour and comprise of at least one credit hour.

4. In order to receive credit for completing a continuing education course, a licensee must attend at least 90 percent of the scheduled classroom hours for the course, regardless of the length of the course.

5. The board may approve only up to two hours of credit per licensing period for courses dealing with the construction industry, but outside the scope of the standards of practice.

6. The board may approve up to four hours of credit per licensing period for attending a quarterly or special board meeting or for serving on a committee appointed by the board.

7. The board may approve up to two hours of credit per licensing period for each class taken which is taught by a non approved instructor and only upon approval of the chief operating officer prior to the LHI's participation in the course.

8. The board may approve up to eight hours of continuing education credit per licensing period for online and/or streaming video courses.

9. The board may approve up to eight hours of continuing education credit per licensing period for any combination of online courses, streaming video courses, courses given by an unapproved instructor and courses which are outside the scope of the standards of practice.

C.1. The board may approve online, streaming video, and other means of electronic delivery of continuing education courses. Online instructors must be certified by the Distance Education Training Council, the International Distance Education Certification Center or the Louisiana Board of Regents and submit their certification with their application.

2. All online, streaming video and other electronic delivery courses must be within the scope of the standards of practice.

3. All online, streaming video and other electronic delivery continuing education instructors must meet all continuing education instructor requirements, unless exempt under Paragraph F.2.

4. Streaming video courses must be live and interactive, with the ability for the LHI to communicate immediately with the instructor and ask questions. The instructor must have the ability to immediately verify that the LHI's presence and participation in the course. If the instructor cannot verify the LHI's presence and participation, the instructor must dismiss the LHI from the course. No credit will be given for the entire course if the LHI is dismissed.

D.1. - D.2. ...

E. It is the duty of every licensee to provide proof of compliance with continuing education requirements on a timely basis. In order to receive credit from the board for completion of continuing education courses under this Section, proof of compliance must be submitted on forms approved by the board and prepared by board-approved continuing education instructors.

F.1. In order to qualify as a continuing education instructor, an applicant shall:

i. pay the required continuing education provider fee(s);

ii. be a licensed home inspector for at least three years as of January 1, 2010, unless approved by the board prior to that date;

iii. provide evidence that he has completed 300 inspections;

iv. not have been found guilty of violating these rules or the Home Inspector Licensing Law within the five years prior to his application; and

v. be approved by the board.

2. Professional trade organizations, accredited technical schools and colleges and certain industry companies may be approved by the board on a case by case basis as a continuing education instructor without meeting the requirements set forth in Paragraph F.1 above. However, these entities must submit a completed continuing education instructor application, pay the requisite fee and meet all other requirements set forth in these rules.

3. A licensee, who is also a board-approved continuing education instructor, may qualify to receive up to



10 hours of continuing education requirements per licensing period by presenting satisfactory evidence to the board of participation, other than as a student, in educational processes and programs in home inspection practices or techniques, including but not limited to teaching, program development, and preparation of textbooks, monographs, articles, or other instructional material subject to approval of the board.

4.a. All continuing education instructors must submit the following to the chief operating officer for approval at least 30 days prior to instruction:

- i. a syllabus of any course to be taught by that continuing education instructor;
- ii. the requested number of continuing education credit hours for each course; and
- iii. the name and qualifications of the instructor teaching on his or its behalf, if applicable.

b. The chief operating officer, with direction from the continuing education committee chairman, will determine the number of hours credit to be given for the continuing education course submitted; whether the course is within the scope of the standards of practice; whether a substitute instructor is approved; and whether the course is approved. Once approved, the instructor may teach any approved courses at his discretion.

5. All continuing education instructors shall provide sign-in sheets, whether electronic or otherwise, for LHIs to complete upon entering a class, joining a streaming lecture or participating online. At the end of each class, the instructor shall provide the LHI with a certificate of completion. Sign in sheets and certificates of completion shall include the date and time of the course, the number of hours of credit assigned to each course by the board and the name of the instructor teaching the course or courses. The instructor shall forward all sign-in sheets and certificates of completion to the board within five days of completion of the course by the LHI, or immediately upon request by the board.

6. The names and contact information for all approved continuing education instructors will be posted on the board's official website. At the request of an instructor, the board will also post announcements of continuing education classes on its website upon written notice by the instructor 30 days prior to the class.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1477, and R.S. 37:1479-1480.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2742 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 36:2860 (December 2010), LR 37:2405 (August 2011).

### **Chapter 3. Standards of Practice**

#### **§325. Interior System**

- A. The home inspector shall inspect:
1. - 3. ...
  4. all doors and a representative number of windows; and
  5. garage doors and electronic beam safety reverse features;
- B. - C.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home inspectors, LR 26:2748 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 30:1692 (August 2004), LR 37:2406 (August 2011).

### **Chapter 5. Code of Ethics**

#### **§501. Code of Ethics**

- A. ...
- B. Ethical Obligations

1. - 3. ...

4. The LHI shall not directly or indirectly compensate real estate agents, brokers, or any other parties having a financial interest in the closing/settlement of real estate transactions, for the referral of inspections or for inclusion on a list of recommended inspectors, preferred providers, or similar arrangements.

5. - 12. ...

13. The LHI shall not disseminate or distribute advertising, marketing, or promotional materials which are fraudulent, false, deceptive, or misleading with respect to the education, experience, or qualifications of the LHI or the company with which he is affiliated.

14. - 15. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2749 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 30:1693 (August 2004), LR 36:2863 (December 2010), LR 37:2406 (August 2011).

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Board Attorney

1108#024

### **RULE**

#### **Office of the Governor Real Estate Appraisers Board**

Appraisal Management Companies  
(LAC 46:LXVII.Chapters 301-309)

Under the authority of the newly enacted Appraisal Management Company Licensing and Regulation Act, R.S. 37:3415.1 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Louisiana Real Estate Appraisers Board has enacted LAC 46:LXVII, Professional and Occupational Standards, Real Estate, Subpart 3, Appraisal Management Companies, Chapters 301-309. These rules shall serve as an extension of the herein cited statute, which became effective January 1, 2011.

#### **Title 46**

#### **PROFESSIONAL AND OCCUPATIONAL STANDARDS**

#### **Part LXVII. Real Estate**

#### **Subpart 3. Appraisal Management Companies**

#### **Chapter 301. Authority**

#### **§30101. Adoption; Powers of the Board**

A. The rules and regulations of the Louisiana Real Estate Appraisers Board pertaining to the licensing and regulation of appraisal management companies have been adopted

pursuant to and in compliance with R.S. 37:3415.1 et seq. Any violation of these rules and regulations shall be sufficient cause for any disciplinary action permitted by law.

B. The board shall have the full power and authority to:

1. regulate the issuance of appraisal management company licenses;
2. censure appraisal management company licensees; and
3. suspend or revoke appraisal management company licensees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Real Estate Appraisers Board, LR 37:2406 (August 2011).

### **Chapter 303. Forms and Applications**

#### **§30301. Initial License Applications**

A. Applications for initial licensing as an appraisal management company shall be in such forms and detail as prescribed by the board. Applicants shall submit all documentation requested on the application and shall adhere to any directions and deadlines prescribed therein.

B. Applications for initial licensing as an appraisal management company shall include, at a minimum, the following information:

1. the name, business address, telephone number, and the email address of the applicant;
2. the name, address, and contact information of each individual or entity that has any interest in the appraisal management company;
3. the name, address, and contact information of the controlling person, as defined by R.S. 37:3415.2;
4. the designation of an agent for service of process.

C. Applications for initial licensing as an appraisal management company shall include, at a minimum, the following certifications.

1. The applicant has a system in place to verify that all Louisiana appraisers on the panel of the appraisal management company are Certified Residential or Certified General Appraisers.

2. The applicant has a system in place to review the work of all independent appraisers performing appraisal services.

a. The appraisal services shall be conducted in conformity with the Uniform Standards of Professional Appraisal Practice.

3. The applicant will maintain a record of each request for appraisal services applicable to Louisiana properties, as well as the name of the independent appraiser that performs appraisal services, and the fee paid to the appraiser for each assignment.

4. The designated controlling person has accepted the responsibilities attendant to acting as such.

5. The applicant can attest to the good moral character of the individuals that are directed to manage the appraisal management company business.

D. Applications for initial licensing as an appraisal management company shall be submitted, at a minimum, with the following documentation:

1. a license history verification from each jurisdiction in which the applicant is currently licensed or has been licensed as an appraisal management company;

2. a copy of any trade name and trademark registration issued by the Louisiana Secretary of State for use by the applicant;

3. a copy of the resolution or other document executed by a principal of the appraisal management company designating a controlling person;

4. a copy of any corporation, partnership, or limited liability company registration certificate issued to the applicant by the Louisiana Secretary of State.

E. When an applicant has made a false statement of material fact on an initial license application or in any related document submitted therein, such false statement may in itself be grounds for refusal of an initial license.

F. If the board denies an application for initial licensing, the applicant shall be notified in writing and shall be afforded an opportunity for a hearing before the board to show cause as to why the application should not be denied.

G. If the board determines that an applicant has satisfactorily met the prescribed requirements for initial licensing, a Louisiana appraisal management company license shall be issued to the applicant.

H. Initial licenses shall be issued for a period of 12 months and shall expire one year from the date the initial license is issued. Conducting any activity authorized by the license after the date of expiration shall be deemed a violation of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Real Estate Appraisers Board, LR 37:2407 (August 2011).

#### **§30303. License Renewal Applications**

A. Each appraisal management company license shall be renewed annually. Timely submission of a renewal application shall rest solely with the licensee.

B. The renewal application shall be in such form and detail as prescribed by the board and shall be accompanied by all documentation requested therein. Applicants for a renewal license shall adhere to all directions and deadlines prescribed within the application.

C. When an applicant has made a false statement of material fact on a license renewal application, or in any related document submitted therein, such false statement may in itself be grounds for refusal of a renewal license.

D. A licensee that fails to renew by the expiration date of the annual license shall be prohibited from operating as an appraisal management company in Louisiana until such time that the license has been renewed and any further requirements of the board have been met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Real Estate Appraisers Board, LR 37:2407 (August 2011).

### **Chapter 305. Responsibilities and Duties**

#### **§30501. Record Keeping**

A. Licensees shall maintain the following records in a complete and accurate manner:

1. all requests for appraisal services that have been referred to state certified real estate appraisers by the appraisal management company;

2. the amount of fees collected from borrowers or clients by the appraisal management company;

3. all payments made by the appraisal management company to any state licensed real estate appraiser;

4. any and all related documents, correspondence, accounts, reports, papers, books, or records.

B. All records shall be kept properly indexed and readily available to the board for review upon request and without prior notice. Duly authorized representatives of the board shall be authorized to inspect such records at the offices of licensees between the hours of 9 a.m. and 4 p.m., Saturdays, Sundays, and legal holidays excluded, and to subpoena any of the said records.

C. All records specified in this Chapter shall be retained for a period of five years; however, records that are used in a judicial proceeding, in which the appraiser provided testimony related to the appraisal assignment, shall be retained for at least two years after disposition, whichever period expires last.

D. At any time that a document or information on file with the board becomes inaccurate or incomplete, the appraisal management company shall notify the board in writing within five days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Real Estate Appraisers Board, LR 37:2407 (August 2011).

### **Chapter 307. Prohibited Activities**

#### **§30701. Improper Influence**

A. Licensees shall not permit an agent, or anyone acting on behalf of the licensee, to engage in any of the following activities:

1. requiring the appraiser to collect the appraisal fee from a borrower, homeowner or third party;

2. requiring the appraiser to provide the appraisal management company with the appraiser's digital signature or seal;

3. altering, amending, or changing an appraisal report submitted by a licensed or certified appraiser by removing the appraiser's signature or seal or by adding or removing information to or from the appraisal report;

4. removing an independent appraiser from the appraisal management company's panel without prior written notice that includes supporting evidence that:

a. the appraiser has acted illegally;

b. the appraiser has violated the Uniform Standards of Professional Appraisal Practice, or other applicable state statutes or rules; or

c. the appraiser has had substandard performances or otherwise acted in an improper or unprofessional manner.

5. entering into agreements with independent appraisers, unless the appraisers are licensed as a Residential Certified Real Estate Appraiser or General Certified Real Estate Appraiser and in good standing with the Louisiana Real Estate Appraisers Board;

6. requesting an appraiser to provide an estimated, predetermined, or desired value in an appraisal report or to provide estimated values or comparable sales at any time before the appraisal report is completed;

7. committing an act or practice that impairs, or attempts to impair, an appraiser's independence, objectivity or impartiality; or

8. making referrals to Louisiana appraisers for appraisal services during any period in which the appraisal management company license has expired.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Real Estate Appraisers Board, LR 37:2408 (August 2011).

#### **§30703. Exemptions to Prohibited Activities**

A. It shall not be deemed a prohibitive activity to:

1. provide an appraiser with a copy of the sales contract for a purchase transaction;

2. request additional information from an independent appraiser about the basis for a valuation;

3. request that an independent appraiser correct factual errors in an appraisal report; or

4. request that an independent appraiser provide further substantiation, detail, or explanation for the appraiser's value conclusion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Real Estate Appraisers Board, LR 37:2408 (August 2011).

### **Chapter 309. Disciplinary Authority; Enforcement and Hearings**

#### **§30901. Causes for Censure, Suspension, Revocation, or Denial of a License**

A. The Louisiana Real Estate Appraisers Board may censure, deny, suspend, or revoke an appraisal management company license, or may restrict or limit the activities of an appraisal management company or a person who owns an interest in or participates in the business of the appraisal management company, if the board finds that any of the following circumstances apply.

1. The application for licensing is found to contain statements that, in light of the circumstances under which they were made, are false or misleading with respect to a material fact.

2. The licensee has failed to comply with the rules and regulations of the board and/or the Louisiana Appraisal Management Company Licensing and Regulation Act.

3. The licensee's controlling principal has pled or been found guilty to a felony or within the past ten years has pled guilty or been convicted of a misdemeanor involving mortgage lending or real estate appraising or has committed an offense involving breach of trust, moral turpitude, fraudulent or dishonest dealings.

4. The licensee is permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing to conduct any practice involving appraisal management services or operation of an appraisal management company.

5. The licensee is the subject of an order by the board denying, suspending, or revoking the licensee's privilege to operate as an appraisal management company in Louisiana.

6. The licensee acted as an appraisal management company while not properly licensed by the board.

B. Every licensee shall cooperate fully with and answer all questions propounded by the board personnel conducting an investigation.

C. Every licensee shall produce any document, book, or record in its possession or under its control, concerning any matter under investigation.

D. As a result of an investigation, when it appears that violations of the Louisiana Appraisal Management Company Licensing and Regulation Act and/or rules and regulations of the board may have been committed by a licensee, the violations may be adjudicated through informal or formal adjudicatory proceedings.

1. Informal Adjudicatory Proceedings

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

b. An informal hearing may be conducted only when there is an admission by the respondent that the violation(s) were committed as alleged.

c. A preliminary notice of adjudication shall be issued to advise the respondent of the violation(s) alleged and to advise the respondent that the matter can be resolved informally should the respondent desire to admit to committing the act(s) specified and submits a written request that the matter be resolved informally.

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

e. The informal hearing shall be attended by the hearing examiner and, if necessary, the case investigator, or in the absence of the case investigator, a designated representative. The hearing examiner shall inform the hearing officer of the administrative, jurisdictional, and other matters relevant to the proceedings.

f. Following an admission by the respondent that the violations were committed as alleged, the hearing officer may enter into a recommended stipulations and consent order to include the imposition of any sanctions authorized by the Louisiana Appraisal Management Company Licensing and Regulation Act.

g. No evidence will be presented, no witnesses will be called and no formal transcript of the proceedings will be prepared by the board.

h. In the written document the respondent must stipulate to having committed the act(s) in violation of the Louisiana Appraisal Management Company Licensing and Regulation Act and/or the rules and regulations of the board, accept the sanctions recommended by the hearing officer, and waive any rights to request a rehearing, reopening, or reconsideration by the board, and the right to judicial appeal of the consent order.

i. At the informal hearing, the respondent shall admit to having committed the act(s) specified, accept the sanctions recommended by the hearing officer, and waive the specified appellate rights, or the alleged violations shall be referred to a formal adjudicatory hearing.

j. If the respondent does execute a stipulation and consent order, the executive director shall submit the document to the board at the next regular meeting for approval and for authorization to allow the executive director to execute the consent order in the name of the board.

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

2. Formal Adjudicatory Proceedings

a. All formal public adjudicatory hearings shall be conducted under the auspices of R.S. 37:3415.20 and the Administrative Procedure Act.

b. Board members who have provided technical assistance in any matter adjudicated at a formal adjudicatory proceeding shall recuse themselves and not participate in any portion of the proceedings.

c. The order issued by the board pursuant to any formal public adjudicatory proceeding shall become effective on the eleventh day following the date the order is issued by the board and entered into the record at the proceedings.

d. If a request for rehearing, reopening, or reconsideration of the order of the board is timely filed and denied by the board, the order shall become final on mailing of the notice of the board's final decision on the request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Real Estate Appraisers Board, LR 37:2408 (August 2011).

**§30903. Appellate Proceedings**

A. Rehearings

1. An order of the board shall be subject to rehearing, reopening, or reconsideration by the board on receipt of a written request from a respondent. An application for rehearing, reopening, or reconsideration must be postmarked or received at the office of the board within 10 days from the date of entry of the order rendered by the board.

2. The date of entry is the date the order is issued by the board and entered into the record at the formal adjudicatory proceedings.

3. The request shall be reviewed by the board attorney for compliance with the Administrative Procedure Act. A finding by the board attorney that the request does not establish grounds for rehearing, reopening or reconsideration shall result in a denial of the request.

B. Judicial Review

1. Proceedings for judicial review of an order issued by the board may be instituted by filing a Petition for Judicial Review in the Nineteenth Judicial District Court in the Parish of East Baton Rouge.

2. In the event a request for rehearing, reopening or reconsideration has been filed with the board, the party making the request shall have 30 days from the final decision on the request within which to file a Petition for Judicial Review.

3. If a request for rehearing, reopening or reconsideration is not filed with the board, the Petition for Judicial Review must be filed in the Nineteenth Judicial District Court within 30 days after the mailing of the order of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Real Estate Appraisers Board, LR 37:2409 (August 2011).

**§30905. Costs of Adjudicatory Proceedings**

A. On a finding that a respondent has committed the violation(s) as alleged in any formal or informal adjudicatory proceeding, the respondent may be assessed the administrative costs of the proceeding as determined by the board. Payment of these costs shall be a condition of satisfying any order issued by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Real Estate Appraisers Board, LR 37:2410 (August 2011).

**§30907. Stay of Enforcement**

A. The filing of a petition for judicial review does not itself stay enforcement of an order issued by the board. A stay of enforcement will be granted only when directed by the court conducting a judicial review of adjudication.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Real Estate Appraisers Board, LR 37:2410 (August 2011).

Bruce Unangst  
Executive Director

1108#023

**RULE**

**Department of Natural Resources  
Office of Conservation**

**Water Well Notification Requirements  
(LAC 43:VI.701)**

The Louisiana Office of Conservation has amended LAC 43:VI.701 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the power delegated under the laws of the state of Louisiana. The amendment clarifies that the owner of a domestic well or rig supply well may allow the well driller to file a well registration form on the owner's behalf to fulfill the owner's obligation to register his well no later than 60 days after installation.

**Title 43**

**NATURAL RESOURCES**

**Part VI. Water Resources Management**

**Subpart 1. Ground Water Management**

**Chapter 7. Water Well Notification Requirements in  
Non-Critical Ground Water Areas**

**§701. Applicability**

A. - C.1. ...

a. At the well owner's discretion, the notification provided by the water-well drilling contractor pursuant to LAC 56:I et seq. within 30 days after completion shall fulfill the requirements of this Section.

C.2. - 3.a. ...

b. At the well owner's discretion, the notification provided by the water-well drilling contractor pursuant to LAC 56:I et seq. within 30 days after completion shall fulfill the requirements of this Section.

DC.4. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3097 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 30:1215 (June 2004), amended LR 35:252 (February 2009), LR 37:2410 (August 2011).

James H. Welsh  
Commissioner

1108#049

**RULE**

**Department of Public Safety and Corrections  
Gaming Control Board**

**Definition of Louisiana Business  
(LAC 42:XIII.1701)**

The Louisiana Gaming Control Board hereby gives notice that it has amended LAC 42:XIII.1701.

**Title 42**

**LOUISIANA GAMING**

**Part XIII. Riverboat Gaming**

**Subpart 2. State Police Riverboat Gaming Division**

**Chapter 17. General Provisions**

**§1701. Definitions**

A. ...

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*Louisiana Business, Louisiana Company, Louisiana Corporation or Louisiana Firm*—a business, company, corporation or firm which is at least 51 percent owned by one or more Louisiana individual domiciliaries and/or a corporation, limited liability company or other business entity with a legal and commercial domicile in Louisiana who also control and operate the business shall be considered a Louisiana business, company, corporation or firm for purposes of Louisiana gaming control law and regulations. A business, company, corporation or firm qualified with the Secretary of State and authorized to do business in Louisiana which has a physical presence in the state in the form of property or facilities owned or leased in Louisiana and which employs Louisiana residents who control or operate the Louisiana business activity or enterprise may be considered a Louisiana business, company, corporation or firm. *Control* in this context means exercising the power to make policy decisions. *Operate* in this context means being actively involved in the day-to-day management of the business. *Commercial domicile* in this context means the place from which the business is directed or managed.

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AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 19:1176 (September 1993), amended LR 21:702 (July 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 22:1139 (November 1996), LR 24:344 (February 1998), LR 26:1314 (June 2000), LR 29:363 (March 2003), LR 34:2663 (December 2008), LR 37:2410 (August 2011).

Dane K. Morgan  
Chairman

1108#013

## RULE

### Department of Transportation and Development Professional Engineering and Land Surveying Board

#### General Provisions (LAC 46:LXI.Chapters 7, 9,13, 15 17, 29, and 31)

Under the authority of the Louisiana Professional Engineering and Land Surveying Licensure Law, La. R.S. 37:681, et seq., and in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., the Louisiana Professional Engineering and Land Surveying Board has amended its Rules contained in LAC 46:LXI.Chapters 1 through 33.

These are primarily technical revisions of existing rules under which LAPELS operates. One set of revisions to a number of Sections change the titles of LAPELS' executive secretary and deputy executive secretary to be consistent with recent changes to the licensure law. The revisions to Section 707 change (i) the composition and duties of complaint review committees to be consistent with recent changes to the licensure law and (ii) the date for election of board officers. The revisions to this Section also add to the list of LAPELS standing committees the firm licensure committee. The adoption of Section 727 is to memorialize the procedure for the issuance of declaratory orders and rulings. The revisions to Section 909 change the terminology used in describing the requisite experience for professional land surveyor licensure to be consistent with recent changes to the licensure law. The revisions to Section 1301 change the application deadlines for licensure. The revisions to Sections 1509 make it clear that applicants for licensure only need to gain the requisite experience by the time of licensure rather than by the time of application. The revisions to Section 2301 simply change terminology. The revisions to Sections 2901 through 2913 clarify and update the standards of practice for boundary surveys. The revisions to Section 3105 correct the reference to the standards of practice for boundary surveys. The revisions to Sections 3111 and 3113 make it clear that the authoring and publishing of books related to engineering or land surveying will qualify for continuing education credit.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part LXI. Professional Engineers and Land Surveyors

#### Chapter 7. Bylaws

#### §701. Board Nominations

A. ...

B. The division of engineering practice classification of each board member shall remain unchanged during each administrative year.

1. - 2. ...

3. If a board member is not a member of the Louisiana Engineering Society or the Louisiana Society of Professional Surveyors, it shall be his duty to notify the executive director of any significant change in his regular employment; the executive director shall so advise the Louisiana Engineering Society or the Louisiana Society of Professional Surveyors for its action.

C. ...

D. In the event of death or resignation of a board member, the executive director shall immediately notify the appropriate nominating organization.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 4:298 (August 1978), amended LR 5:120 (May 1979), LR 11:1179 (December 1985), LR 19:57 (January 1993), amended by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 27:1023 (July 2001), LR 30:1706 (August 2004), LR 37:2411 (August 2011).

#### §707. Board Organization

A. - B. ...

C. Date of Elections. The election of board officers shall take place not later than at the board's January meeting. In the event that an officer cannot complete his/her term, an election in order to fill the unexpired term shall be scheduled at the earliest practical regular or special meeting.

D. Duties

1. - 2. ...

3. Secretary. The secretary shall:

a. - b. ...

c. assume all responsibilities of the executive director, in the event of the absence or incapacity of the executive director;

3.d. - 4. ...

E. Committees. The board may establish standing committees, including but not limited to the following: Executive Committee, Civil Engineering Committee, Other Disciplines Engineering Committee, Land Surveying Committee, Engineer Intern Committee, Liaison and Law Review Committee, Education/Accreditation Committee, Finance Committee, Nominations and Awards Committee, Complaint Review Committees, Continuing Professional Development Committee, Architect-Engineer Liaison Committee, and Firm Licensure Committee. The board may also establish ad hoc committees from time to time as necessary.

1. ...

2. Executive Committee. The chairman, vice chairman, secretary, and treasurer shall constitute the Executive Committee. The chairman of the board shall serve as chairman of the Executive Committee. The Executive Committee shall oversee the operations of the office of the board and shall advise the executive director as to the conduct of the business of the board between meetings. The Executive Committee shall make recommendations to the board with respect to personnel, policies and procedures.

3. - 9. ...

10. Complaint Review Committees. Complaint review committees shall be composed of one standing member (the executive director or deputy executive director) and at least three board members appointed on a case-by-case basis. It shall be the responsibility of each committee to review the results of investigations against licensees, certificate holders and unlicensed persons, to prefer charges and/or to recommend appropriate action to the board. Any decision, including the preferal of charges, shall be made by a minimum two-thirds vote of the board members serving on a committee.

11. - 12. ...

13. Firm Licensure Committee. The chairman of the board may appoint a Firm Licensure Committee composed of not less than two board members. It shall be the duty of this committee to review and make recommendations to the board regarding applications for firm licensure and other issues relating to firm licensure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 2:52 (February 1976), amended LR 5:110 (May 1979), LR 11:1179 (December 1985), LR 19:54 (January 1993), LR 21:1353 (December 1995), amended by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 27:1024 (July 2001), LR 30:1707 (August 2004), LR 33:2788 (December 2007), LR 35:1908 (September 2009), LR 37:2411 (August 2011).

#### **§709. Executive Director**

A. Appointment. The board shall appoint an executive director, who shall assist the board members in the performance of their duties.

B. Ex-Officio Committee Member. Although not a member of the board, the executive director shall be an ex-officio member of all committees.

C. Duties of the Executive Director. The executive director shall:

1. - 25. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 2:53 (February 1976), amended LR 5:118 (May 1979), LR 11:1180 (December 1985), LR 19:55 (January 1993), LR 21:1354 (December 1995), amended by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 27:1025 (July 2001), LR 30:1709 (August 2004), LR 37:2412 (August 2011).

#### **§715. Rulemaking Process**

A. - B. ...

C. Requirements of Proposal. Such proposal shall:

1. - 2. ...

3. be sent to the chairman and the executive director at least 30 days before the next regular meeting of the board.

D. Copies of Proposal. The executive director shall send copies of the proposal to all board members at least 10 days before the next regular meeting of the board.

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 2:54 (February 1976), amended LR 5:119 (May 1979), LR 11:1182 (December 1985), amended by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 27:1026 (July 2001) LR 30:1710 (August 2004), LR 37:2412 (August 2011).

#### **§717. Disbursements**

A. - B. ...

C. Required Signatures on Checks. All checks must be signed by any two of the following individuals:

1. ...
2. executive director;
3. deputy executive director; or
4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 2:58 (February 1976), amended LR 5:119 (May 1979), LR 11:1182 (December 1985), LR 21:1355 (December 1995), amended by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 27:1026 (July 2001), LR 30:1710 (August 2004), LR 37:2412 (August 2011).

#### **§727. Declaratory Orders and Rulings**

A. The board may issue, upon request, a declaratory order or ruling as to the applicability of any statutory provision, rule or order of the board. Declaratory orders and rulings shall have the same status as board decisions or orders in disciplinary and enforcement proceedings.

B. A request for a declaratory order or ruling is made in the form of a written petition to the board on a form provided by the board.

C. Said petition shall be considered by the board.

D. The declaratory order or ruling of the board on said petition shall be in writing and mailed to the petitioner at the last address furnished to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 37:2412 (August 2011).

### **Chapter 9. Requirements for Certification and Licensure of Individuals and Temporary Permit to Practice Engineering**

#### **§901. Engineer Intern Certification**

A. - A.3. ...

B. The authority for the executive director to issue a certificate can only be granted by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 2:352 (November 1976), amended LR 5:114 (May 1979), LR 6:735 (December 1980), LR 7:644 (December 1981), amended by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 27:1027 (July 2001), LR 30:1711(August 2004), LR 32:1618 (September 2006), LR 37:2412 (August 2011).

#### **§903. Professional Engineer Licensure**

A. - A.2. ...

B. The authority for the executive director to issue a license can only be granted by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 2:352 (November 1976), amended LR 5:114 (May 1979), LR 5:365 (November 1979), LR 6:735 (December 1980), LR 7:644 (December 1981), LR 10:804 (October 1984), LR 11:362 (April 1985), LR 19:56 (January 1993), amended by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 27:1028 (July 2001), LR 30:1712 (August 2004), LR 32:1619 (September 2006), LR 37:2412 (August 2011).

#### **§905. Temporary Permit to Practice Engineering**

A. ...

B. The authority for the executive director to issue a temporary permit can only be granted by the board.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 8:192 (April 1982), amended LR 16:773 (September 1990), LR 19:56 (January 1993), LR 22:286 (April 1996), amended by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 27:1028 (July 2001), LR 30:1712 (August 2004), LR 37:2412 (August 2011).

#### **§907. Land Surveyor Intern Certification**

A. - A.2. ...

B. The authority for the executive director to issue a certificate can only be granted by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 2:352 (November 1976), amended LR 5:114 (May 1979), LR 5:365 (November 1979), LR 6:735 (December 1980), LR 7:644 (December 1981), LR 10:90 (February 1984), LR 16:773 (September 1990), amended by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 27:1028 (July 2001), LR 30:1712 (August 2004), LR 32:1619 (September 2006), LR 37:2413 (August 2011).

#### **§909. Land Surveyor Licensure**

A. The requirements for licensure as a professional land surveyor under the two alternatives provided in the licensure law are as follows:

1. an applicant for licensure as a professional land surveyor shall be a land surveyor intern, or an individual who meets the qualifications to be a land surveyor intern, who is of good character and reputation, who has a verifiable record of four years or more of combined office and field experience in land surveying including two years or more of progressive experience on land surveying projects under the supervision of a professional land surveyor, who has passed the oral examination, who has passed the written examination in the principals and practices of land surveying and Louisiana laws of land surveying, and who was recommended for licensure by five personal references (at least three of whom must be professional land surveyors who have personal knowledge of the applicant), who has submitted an application for licensure in accordance with R.S. 37:694, and who was duly licensed as a professional land surveyor by the board; or

2. ...

B. The authority for the executive director to issue a license can only be granted by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 2:244 (August 1976), amended LR 2:352 (November 1976), LR 5:114 (May 1979), LR 6:735 (December 1980), LR 7:645 (December 1981), LR 11:362 (April 1985), LR 16:773 (September 1990), LR 19:56 (January 1993), amended by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 27:1029 (July 2001), LR 30:1713 (August 2004), LR 32:1619 (September 2006), LR 35:1909 (September 2009), LR 37:2413 (August 2011).

### **Chapter 13. Examinations**

#### **§1301. General**

A. - B. ...

C. Timely filing of an application with the board does not assure that an applicant will be permitted to take an examination, or be scheduled for examination on a particular date. Effective until July 1, 2011 and ending with the October 2011 exam administration, to be considered for a specific examination date, the application for the following examinations should be received at the board office no later than January 1 for the April examination administration and July 1 for the October examination administration: fundamentals of engineering; fundamentals of land surveying; principles and practice of engineering; principles and practice of land surveying; and Louisiana laws of land surveying. Effective July 1, 2011 and beginning with the April 2012 exam administration, to be considered for a specific examination date, the application for the following examinations should be received at the board office no later than December 1 for the April examination administration and June 1 for the October examination administration: fundamentals of engineering; fundamentals of land surveying; principles and practice of engineering; principles and practice of land surveying; and Louisiana laws of land surveying.

D. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 5:113 (May 1979), amended LR 7:647 (December 1981), LR 11:363 (April 1985), LR 16:774 (September 1990), LR 19:57 (January 1993), amended by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 27:1030 (July 2001), LR 30:1714 (August 2004), LR 35:1909 (September 2009), LR 37:2413 (August 2011).

### **Chapter 15. Experience**

#### **§1509. Experience Should Not Be Anticipated**

A. Experience should not be anticipated.

B. For applicants for professional engineer licensure under §903.A.1 of these rules, the “verifiable record of four years or more of progressive experience obtained subsequent to meeting the educational and applicable experience qualifications to be an engineer intern” should be gained by the time of licensure. Such applicant is required to have gained a minimum of three years and four months of such experience by the time of the application.

C. For applicants for professional land surveyor licensure under §909.A.1 of these rules, the “verifiable record of four years or more of combined office and field experience in land surveying including two years or more of progressive experience on land surveying projects under the supervision of a professional land surveyor” should be gained by the time of licensure. Such applicant is required to have gained a minimum of three years and four months of such experience by the time of the application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Professional Engineering and Surveying Board, LR 27:1031 (July 2001), amended LR 30:1716 (August 2004), LR 37:2413 (August 2011).



## Chapter 17. Applications and Fees

### §1701. Applications

A. - G. ...

H. Applicant files may be destroyed at the discretion of the executive director no earlier than five years after original submission of the application.

I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 5:112 (May 1979), amended LR 5:365 (November 1979), LR 7:646 (December 1981), LR 11:362 (April 1985), LR 19:57 (January 1993), amended by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 27:1032 (July 2001), LR 30:1717 (August 2004), LR 37:2414 (August 2011).

## Chapter 23. Firms

### §2301. General

A. - A.2. ...

B. A firm must be licensed with the board before it may provide or offer to provide professional services in the state of Louisiana.

1. ...

2. A firm may provide or offer to provide both professional engineering and professional land surveying services; provided, however, that the firm must be licensed separately as an engineering firm and as a land surveying firm, and the requirements of this Chapter will apply separately to providing or offering to provide professional engineering services and professional land surveying services.

3. ...

C. Unless otherwise provided, sole proprietorships which bear the full name of the owner who is a licensed professional are exempt from the application of this Chapter. Such sole proprietorships are not required to be licensed as engineering or land surveying firms with the board. Sole proprietorships that do not bear the full name of the owner who is a licensed professional must be licensed with the board as an engineering or land surveying firm and must comply with all the provisions of this Chapter.

D. Joint ventures that provide or offer to provide professional services will not be required to be licensed as separate entities. Nevertheless, any firm (including those sole proprietorships otherwise excluded under §2301.C) that provides or offers to provide professional services in conjunction with its participation in a joint venture can do so only if it complies with the provisions of these rules. In addition, any supervising professional who participates in a joint venture shall be responsible for assuring that all professional services performed by the joint venture are rendered in conformity with the provisions of these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:689.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 3:502 (December 1977), amended LR 5:116 (May 1979), LR 8:191 (April 1982), LR 16:774 (September 1990), amended by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 27:1035 (July 2001), LR 30:1719 (August 2004), LR 37:2414 (August 2011).

## Chapter 29. Standards of Practice for Boundary Surveys

### §2901. Scope and Purpose

A. The following standards of practice for boundary surveying in the state of Louisiana have been adopted to help ensure that boundary surveys are performed in accordance with acceptable procedures.

B. The purpose of these standards is to safeguard life, health and property, and to promote the public welfare, by establishing technical standards of practice for every boundary survey performed in the state of Louisiana so that professional performance can be evaluated for but not limited to research, field work, monuments, descriptions, plats and maps. If higher standards are required by clients, or by local, state and federal jurisdictions, then those standards shall govern. When a boundary survey involves certain corners or lines that are covered under the appropriate edition of the *Manual of Instructions for the Survey of the Public Lands of the United States*, then the Manual's rules or instructions for these particular surveys shall apply. Every professional land surveyor performing a boundary survey in the state of Louisiana is required to follow these standards.

C. A boundary survey in this state shall only be performed by a professional land surveyor, licensed pursuant to the laws of this state, or persons under his/her responsible charge. The professional land surveyor shall at all times comply with the provisions of the licensure law and the rules of the board.

D. It is intended that these standards of practice not be relied upon by the professional land surveyor as a substitute for the exercise of proper individual skill, professional discretion, and professional judgment in fulfilling the contractual requirements of any boundary survey. This also does not absolve the professional land surveyor from his/her obligation to use due diligence in the practice of land surveying and from complying with all applicable laws and rules pertaining to the practice of land surveying.

E. When in the professional land surveyor's opinion, special conditions exist that effectively prevent the boundary survey from meeting these standards of practice, the special conditions and any necessary deviation from these standards shall be noted upon the drawing. It shall be a violation of this Chapter to use special conditions to circumvent the intent and purpose of these standards of practice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 16:1064 (December 1990), amended LR 22:713 (August 1996), amended by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 27:1042 (July 2001), LR 30:1725 (August 2004), LR 37:2414 (August 2011).

### §2903. Definitions

A. Any terms not specifically defined herein shall be as defined in the most current publication of *Definitions of Surveying and Associated Terms* as published by the American Congress on Surveying and Mapping. For the purpose of this Chapter, all the definitions listed that differ from any other source are to be interpreted as written herein.

*Artificial Monuments*—relatively permanent objects used to identify the location of a corner. Artificial monuments shall retain a stable and distinctive location and

shall be of sufficient size and composition to resist the deteriorating forces of nature.

*Client*—the person with whom the contract for work is made. This may or may not be the owner.

*Corner*—a point on a land boundary at which two or more boundary lines meet. It is not the same as a monument, which refers to the physical evidence of the corner's location on the ground.

*Deed*—an instrument in writing which, when executed and delivered, conveys an estate in real property or interest therein.

*Description, Legal*—a written description usually contained in an act of conveyance, judgment of possession, or recognized by law which definitely locates property by metes and bounds or by reference to government surveys, coordinate systems or recorded maps; a description which is sufficient to locate the property without oral testimony.

*Description, Metes and Bounds*—a description of a parcel of land by reference to course and distances around the tract, or by reference to natural or artificial monuments.

*Encroachment*—any structure or obstruction which intrudes upon, invades or trespasses upon the property of another.

*May*—when used means that a choice on the part of the professional land surveyor is allowed.

*Monument*—a physical object or structure which marks the location of a corner or other survey point. In public lands surveys, the term *corner* is employed to denote a point determined by the surveying process, whereas the *monument* is the physical object installed, or structure erected, to mark the corner point upon the earth's surface. Monument and corner are not synonymous, though the two terms are often used in the same sense.

*Natural Monuments*—objects which are the works of nature, such as streams, rivers, ponds, lakes, bays, trees, rock outcrops, and other definitive topographic features.

*Positional Accuracy*—the difference between the actual position of a monument and the position as reported on the plat or map.

*Positional Tolerance*—the distance that any monument may be mislocated in relation to any other monument cited in the survey.

*Prescription*—title obtained in law by long possession. Occupancy for the period prescribed by the Louisiana Civil Code, as sufficient to bar an action for the recovery of the property, gives title by prescription.

*Right of Way*—any strip or area of land, including surface, overhead, or underground, encumbered by a servitude. Rights are typically granted by deed for access or for construction, operation and/or maintenance purposes, according to the terms of the grant.

*Servitude*—an interest held by one person in land of another whereby the first person is accorded partial use of such land for a specific purpose. A servitude restricts but does not abridge the rights of the fee owner to the use and enjoyment of his/her land. The term *easement* is often used interchangeably with *servitude* and generally means the same thing.

*Shall*—the subject is imperative or mandatory and must be done by the professional land surveyor.

*Should*—past tense of *shall* and used to express obligation, duty or desirability.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 16:1064 (December 1990), amended LR 22:713 (August 1996), amended by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 27:1042 (July 2001), LR 30:1725 (August 2004), LR 37:2414 (August 2011).

#### §2905. Classification of Boundary Surveys

A. Types of Boundary Surveys. Three types of boundary surveys, which relate to or define property boundaries, are regulated by these standards. These are property boundary surveys, route surveys and mineral unitization surveys.

B. Presented below are categories which define the degree of accuracy which shall be attained for boundary surveys performed in Louisiana. These classifications are based upon the purposes for which the property is being used at the time the survey is performed and any proposed developments which are disclosed to the professional land surveyor by the client. Refer to §2913 for accuracy standards for each of the following classes of boundary surveys.

1. Class A Surveys. Boundary surveys which require maximum surveying accuracy. This includes, but is not limited to, surveys of urban business district properties and highly developed commercial properties.

2. Class B Surveys. Boundary surveys of properties which justify a high degree of surveying accuracy. This includes, but is not limited to, surveys of commercial properties and higher priced residential properties located outside urban business districts and highly developed commercial areas.

3. Class C Surveys. Boundary surveys of residential and suburban areas. This includes, but is not limited to, surveys of residential areas which cannot be classified as Class A or Class B surveys.

4. Class D Surveys. Boundary surveys of all remaining properties which cannot be classified as Class A, B or C surveys. This includes, but is not limited to, surveys of farm lands and rural areas.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 16:1065 (December 1990), amended LR 22:714 (August 1996), amended by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 27:1043 (July 2001), LR 30:1726 (August 2004), LR 37:2415 (August 2011).

#### §2907. Property Boundary Survey

##### A. Definition

*Property Boundary Survey*—a survey which, after careful study, investigation, and evaluation of major factors influencing the location of boundaries, results in the deliberate location or relocation on the ground of, and the recovery or installation of monuments that define the location and extent of, one or more boundaries. Surveying and mapping activities which meet the definition of a property boundary survey are listed in Subparagraph a of §105.A, *Practice of Land Surveying*. Any plat or map prepared from surveying and mapping activities listed in Subparagraph b of §105.A, *Practice of Land Surveying*, which does not meet the definition of a property boundary

survey, shall have a note stating that it that does not represent a property boundary survey.

B. Purpose. The primary purpose of the property boundary survey is to locate or relocate the physical position and extent of the boundaries of real property, and the discovery of visible evidence of prescriptive rights relating thereto. A property boundary survey may also include the location or relocation of the physical position and extent of political boundaries which define the perimeters of public or private ownership. In addition, the property boundary survey is a means of marking boundaries for sufficient definition and identification to uniquely locate each lot, parcel, or tract in relation to other well recognized and established points of reference, adjoining properties and rights-of-way.

C. Product. A property boundary survey shall result in the recovery, establishment or reestablishment of monumented corners and points of curvature and tangency. Reference monuments shall be established or reestablished when required by these standards (see Subsection E, "Monuments"). In the event that no plat or map of survey is required, the professional land surveyor shall maintain adequate records to substantiate his/her professional opinion in reestablishing boundary lines and corners on a survey. If requested by the client, a property boundary survey may also include the following:

1. a signed, sealed and dated metes and bounds written description depicting the surveyed boundary (see Subsection H, "Descriptions");
2. a certified plat or map depicting the survey as made on the ground; and
3. a signed, sealed and dated written report of the professional land surveyor's findings and determinations.

D. Research and Investigation. Where the purpose of a property boundary survey neither requires nor includes research and investigation of servitudes, a note to that effect shall be placed upon the plat or map of survey. However, when such research or investigation is required, the professional land surveyor shall request from the client or their agent the most recent legal description, plats or maps describing the property to be surveyed. The professional land surveyor shall then evaluate the necessity to obtain the following data based on the specific purpose of the survey:

1. additional recorded legal descriptions and plats or maps of the tract to be surveyed and tracts adjoining or in proximity to the property to be surveyed;
2. the recorded legal descriptions of adjoining, severing, or otherwise encumbering servitudes or rights-of-way, including but not limited to, highways, roadways, pipelines, utility corridors, and waterways used for drainage, navigation or flood control; and
3. grants, patents, subdivision plats or maps or other recorded data that will reference or influence the position of boundary lines.

E. Monuments. The professional land surveyor shall set monuments at all boundary or lot corners, including points of curvature and points of tangency unless monuments already exist or cannot be set due to physical obstructions. The following guidelines apply to artificial monuments to be set.

1. All monuments set shall be composed of a durable material and shall incorporate a ferrous material to aid in locating them by magnetic locators and, if composed of a

ferrous material, shall be a minimum of 1/2 inch outside diameter, and a minimum of 18 inches in length unless it is physically impossible to set such a monument. If rebar rods are used as survey monuments, the minimum size shall be a #4 bar.

2. Concrete monuments shall be at least 3 inches in width or diameter by 24 inches in length, reinforced with an iron rod at least 1/4 inch in diameter, and may contain a precise mark on top indicating the exact location of the corner.

3. Marks on existing concrete, stone, or steel surface shall consist of drill holes, chisel marks or punch marks and shall be of sufficient size, diameter or depth to be definitive, stable and readily identifiable as a survey monument. Marks on asphalt roads may consist of railroad spikes, large nails, or other permanent ferrous spikes or nail-like objects.

4. It is unacceptable to set wooden stakes as permanent boundary monuments.

5. Monuments shall be set vertically whenever possible and the top shall be reasonably flush with the ground when practical. Monuments subject to damage from earthwork, construction or traffic should be buried at a sufficient depth to offer protection.

6. When physically impossible to set a monument at the corner, witness or reference monuments shall be set, preferably on each converging line at measured distances from the corner and identified as such in the description and on the plat or map of the property.

F. Field Procedures. All field work shall be performed in accordance with accepted modern surveying theory, practice and procedures. Any person in charge of a survey field party shall be well-trained in the technical aspects of property boundary surveying. Every professional land surveyor under whose responsible charge a property boundary survey is conducted is also required to adhere to the following.

1. All field measurement procedures shall be consistent with these standards and modern surveying theory, procedures and techniques.

2. In performing resurveys of tracts having boundaries defined by lines established in public lands surveys, the professional land surveyor shall, as nearly as possible, reestablish the original lines of any prior survey made under United States or state authority. In all townships or portions of townships where no property boundary survey has been made, the professional land surveyor, in surveying or platting the township or portion thereof, shall make it conform as nearly as practicable to the lots and section indicated upon the plats or maps according to which the lands were granted by the state or by the United States (R.S. 50:125).

3. Where applicable, property boundary surveys necessitating the division of a section shall be performed in accordance with the appropriate instructions for the subdivisions of sections as published by the United States Department of the Interior, Bureau of Land Management, in its book entitled *Manual of Instruction for Survey of the Public Lands of the United States*, and all applicable federal laws.

4. Special consideration shall be afforded by the rules of evidence and "hierarchy of calls" before any decision is made regarding property boundaries. "The legal guides for determining a question of boundary or the location of a land

line in order of their importance and value are: 1–natural monuments, 2–artificial monuments, 3–distances, 4–courses, 5–quantity. But the controlling consideration is the intention of the parties" (see citation in *Myer vs. Comegys*, 147 La. 851, 86 So. 307, 309 (1920)).

5. A careful search shall be made for corner monuments affecting the location of the boundaries of land to be surveyed. Any evidence discovered shall be evaluated for its agreement in description and location with the call in the relevant deeds and/or plats or maps.

6. All boundary discrepancies, visible evidence of possible encroachments, and visible indications of rights which may be acquired through prescription or adverse possession shall be physically located. All evidence of servitudes that is visible without meticulous searching shall be physically located during the survey. Furthermore, nonvisible servitudes shall be located only upon the client's specific request and the client's delivery of any necessary documentation.

7. All field data gathered shall satisfy the requirements of the following Subsection on plats and maps.

G. Plats and Maps. Every original plat or map of a property boundary survey should be a reproducible drawing at a suitable scale which clearly shows the results of the field work, computations, research and record information as compiled and checked. The plat or map shall be prepared in conformity with the following guidelines.

1. Any reasonably stable and durable drawing paper, linen or film of reproducible quality will be considered suitable material for property boundary survey plats and maps.

2. The minimum dimensions for plats and maps shall be 8 inches by 10-1/2 inches.

3. All dimensions, bearings or angles, including sufficient data to define the curve, shall be neatly and legibly shown with respect to each property or boundary line. To define a circular curve, the following four elements shall be shown: chord bearing, chord distance, arc and radius. When possible, all bearings shall read in a clockwise direction around the property. All lines and curves shall show sufficient data on the plat or map to calculate a plat or map closure.

4. Monuments shall be labeled as "found" or "set" with a sufficient description of the monument. The description shall include but not be limited to the size and type of material, and relevant reference markers, if any, along with their position in relation to the corner.

5. When the purpose of the property boundary survey dictates, the area of the tract and all pertinent natural or man-made features located during the course of the field survey (water courses, streets, visible utilities, etc.) shall be labeled or represented by an appropriate symbol on the plat or map in its proper location. When appropriate, the feature shall be dimensioned and referenced to the nearest property line.

6. A statement indicating the origin of azimuths or bearings shall be shown on each plat or map. If bearings are used, the basis of the bearing shall include one or more of the following:

a. reference to true north as computed by astronomic observation within one mile of the surveyed site;

b. reference to the Louisiana State Plane Coordinate System with the appropriate zone and when applicable a controlling station(s) with coordinates and datum noted;

c. reference to the record bearing of a well-established line found monumented on the ground as called for in a relevant deed or survey plat or map; or

d. when none of the above alternatives are practical, a magnetic bearing (corrected for declination) may be used.

7. If a coordinate system other than the Louisiana State Plane Coordinate System is used on a plat or map, that system shall be identified. If that system is the Louisiana State Plane Coordinate System, the appropriate zone shall be shown on the plat or map.

8. Where the new survey results differ significantly from the prior deed information in regard to course, distance, location or quantity, the plat or map shall indicate such differences or discrepancies.

9. Where separate intricate details, blowups or inserts are required for clarity, they shall be properly referenced to the portion of the plat or map where they apply. This applies particularly to areas where lines of occupation do not conform to deed lines and to areas where a comparison of adjoining deeds indicates the existence of a gap or an overlap.

10. Cemeteries and burial grounds known by the professional land surveyor to be located within the premises being surveyed shall be indicated on the plat or map. However, a detailed survey of the limits of the cemetery shall not be required unless directed by the client.

11. When the purpose of the property boundary survey dictates, properties, water courses and rights-of-way surrounding, adjoining, or severing the surveyed site shall be identified. Private lands or servitudes should be labeled with the name of the owner or with a reference to the deed under which ownership is held, provided that such information is furnished by the client.

12. Original section, grant, subdivision or survey lines, when an integral part of the deed, shall be shown in proper location with pertinent labeling. A measurement of course and distance shall be shown to a parent tract corner, block corner, section corner, subdivision or grant corner, and existing monuments shall be indicated.

13. Differing line weights or delineating letters or numbers (A, B, C, etc. or 1, 2, 3, etc.) shall be used to clearly show the limits of what is being surveyed.

14. Each plat or map shall show the following:

a. caption or title;

b. client and/or purpose;

c. vicinity map. A vicinity map will not be required if there are sufficient features and landmarks (officially named streets and street intersections, lots and blocks within a subdivision, adjoining subdivisions, Township-Range-Section lines, etc.) on the plat or map that would sufficiently enable a person to identify the location of the survey site;

d. date of the survey;

e. name, telephone number, mailing address and license number of the professional land surveyor, or the firm who employs the professional land surveyor;

f. signature and seal of the professional land surveyor under whose responsible charge the survey was done;

g. scale, written and/or graphic;

h. north arrow, and it is recommended that the drawings be oriented so that north is toward the top of the sheet; and

i. legend for symbols and abbreviations used on the plat or map.

15. Final plats or maps issued to the client shall contain a certification statement by the professional land surveyor certifying its authenticity (that it represents his/her survey) and stating that the property boundary survey is in accordance with the applicable standards of practice as stipulated in this Chapter, based on the current survey "classification" (see §2905, *Classification of Boundary Surveys*).

H. Descriptions. A written legal description of the surveyed tract of land shall provide information to properly locate the property on the ground and distinctly set it apart from all other lands. The following guidelines apply.

1. When the surveyed property's dimensions, boundaries and area are in agreement with the existing recorded deed or platted calls, the existing recorded description may be used if it approximates the standards contained herein.

2. When the property is an aliquot part of a rectangular section or a lot in a platted subdivision, the aliquot method or the lot, block and subdivision method (including recordation data) of describing the property may be used. Metes and bounds descriptions of this type of property are optional.

3. Every aliquot description shall contain the following basic information: aliquot part of section, township, range, parish, land district and meridian (if applicable), parish and state.

4. Every subdivision lot description shall also contain the following basic information: lot, block, unit (if applicable), name of subdivision, city (if applicable), parish and state.

5. Every metes and bounds description may be written in at least two parts. The first part, called the "general description," shall indicate the general location of the property by naming the particular lot or block within which it is located if in a subdivision or by naming the grant or aliquot part of a rectangular section within which it is located, along with the township, range, land district and meridian (if applicable), city (if applicable), parish and state. The second part, called the "particular description," shall logically compile and incorporate calls for the following:

- a. courses and distances of the new survey, preferably in a clockwise direction;
- b. adjoining apparent rights-of-way or servitudes;
- c. monuments (when controlling), including descriptions of type, size, material, reference monuments (if applicable), and whether found, set or replaced; and
- d. the area, if stated, shall be in square feet or acres or hectares within the tolerances specified in this Chapter.

6. The "point of beginning" should ideally be the property corner that is most accessible and most easily identifiable by interested parties. This point shall be carefully chosen and described in a manner which will distinguish it indisputably from any other point. The "commencing point" shall be any identifiable point used to locate the "point of beginning."

7. The courses in the written description shall be as brief and yet as explanatory as the professional land surveyor can construct. Brevity should not cause important locative information to be omitted, and explanatory phrases should not enlarge the description to the extent of confusion.

8. Curved boundaries shall be identified, and sufficient data to define the curve shall be presented. To define a circular curve, the following four elements shall be listed:

- a. chord bearing;
- b. chord distance;
- c. arc; and
- d. radius.

9. Each metes and bounds description shall return to the "point of beginning" and close mathematically within the tolerances stated in this Chapter.

10. A statement at the end of the description shall connect the description to the specific survey on which it is based and to the plat or map which depicts the survey. Such a statement may be phrased:

"This description is based on the property boundary survey and plat or map made by \_\_\_\_\_(name)\_\_\_\_\_, Professional Land Surveyor, dated \_\_\_\_\_."

or

"This description is based on plat or map recorded \_\_\_\_\_(give recordation data)\_\_\_\_\_."

11. The metes and bounds description shall then be signed, sealed and dated by the professional land surveyor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 16:1065 (December 1990), amended LR 19:58 (January 1993), LR 22:714 (August 1996), amended by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 27:1043 (July 2001), LR 30:1726 (August 2004), LR 33:2790 (December 2007), LR 37:2415 (August 2011).

## §2909. Route Survey

### A. Definition

*Route Survey*—a survey for determining the route of a proposed pipeline, power line, cable, road or other linear facilities in order to acquire a right-of-way, servitude or easement from the property owner being crossed.

B. Scope and Product. A route survey shall, as a minimum, consist of the following elements.

1. The professional land surveyor shall utilize sufficient title information and research as needed to define the tract boundaries.

2. The professional land surveyor shall locate sufficient evidence, on the ground, to determine the location of all boundary lines that will be crossed by the proposed right-of-way, servitude or easement. Installation of new monuments is not required when defining the limits of the right-of-way, servitude or easement to be acquired.

3. The professional land surveyor shall prepare a plat(s) or map(s) for those tracts being crossed, showing the alignment of the proposed route and the length of the proposed right-of-way, servitude or easement across the tract. These plats or maps shall be prepared in compliance with those requirements for property boundary survey plats

or maps that are specifically contained in §2907.G1, 2, 6, 7 and 14. Final plats or maps issued to the client shall contain a statement by the professional land surveyor certifying its authenticity (that it represents his/her survey) and stating that the route survey complies with the applicable standards of practice as stipulated in this Chapter. Sufficient information to re-establish the right-of-way, servitude or easement, including any found monuments, must be shown at a suitable scale or in a separate detail on each plat or map.

4. If requested by the client, the professional land surveyor shall prepare a legal description of the proposed right-of-way, servitude or easement for each tract crossed by the proposed facility. The description shall describe the alignment and length of the proposed right-of-way, servitude or easement and shall comply with those requirements for legal descriptions for property boundary surveys that are specifically contained in §2907.H.6 through 11.

5. The accuracy standards that are required for route surveys shall be based on property classification D, as presented in §2913.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 37:2418 (August 2011).

### **§2911. Mineral Unitization Survey**

#### **A. Definition**

*Mineral Unitization Survey*—a survey performed to define subsurface mineral tracts for the specific purpose of allocating mineral rights within a mineral unit.

B. Scope and Product. A mineral unitization survey shall, as a minimum, consist of the following elements.

1. The professional land surveyor shall utilize sufficient title information, as provided by the client, needed to define the mineral tracts, in conjunction with adequate information to define the unit boundary.

2. The professional land surveyor shall determine, on the ground, the location of the unit well and the location of sufficient tract lines in order to determine the subsurface mineral tracts located inside the unit boundaries. Geologically significant wells, as identified by the Louisiana Department of Natural Resources, Office of Conservation field order or the client, will be located with respect to the

unit boundaries. Installation of new monuments defining the limits of the unit, or of the tracts which comprise the unit, is not required.

3. The professional land surveyor shall prepare a unitization plat or map (Louisiana Department of Natural Resources, Office of Conservation field order unit, voluntary unit or declared unit) showing the mineral participant(s) and limits of the tracts (or portions of tracts) which are included in the proposed mineral unit. These plats or maps shall be prepared in compliance with those requirements for property boundary survey plats or maps that are specifically contained in §2907.G1, 2, 6, 7 and 14. These plats or maps shall contain bearings and distances around the perimeter of the unit boundary, but are not required to depict or list such calls for the individual tracts which comprise the unit. Final plats or maps issued to the client shall contain a statement by the professional land surveyor certifying its authenticity (that it represents his/her survey) and stating that the mineral unitization survey complies with the applicable standards of practice as stipulated in this Chapter. In addition, the plats or maps, when applicable, shall be in compliance with the Louisiana Department of Natural Resources, Office of Conservation's requirements governing unit plats and survey plats (LAC 43:XIX.Chapter 41).

4. The accuracy standards that are required for mineral unitization surveys shall be based on property classification D, as presented in §2913.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 37:2419 (August 2011).

### **§2913. Positional Accuracy Specification and Positional Tolerances [Formerly §2909]**

A. If radial survey methods, global positioning systems (GPS) or other acceptable technologies or procedures are used to locate or establish points on the boundary survey, the professional land surveyor shall apply acceptable surveying procedures in order to assure that the allowable positional accuracy and/or positional tolerance of such points are not exceeded. Any conversion from meters to feet shall use U.S. Survey Feet.



Condition	A	B	C	D	Remarks and Formula
	Urban Business District	Urban	Suburban	Rural	
Unadjusted Closure (maximum allowable)	1:15,000	1:10,000	1:7,500	1:5,000	Traverse Loop or between Control Monuments (closed traverse)
Angular Closure (maximum allowable)	10"√N	15"√N	25"√N	30"√N	N = Number of Angles in Traverse (closed traverse)
Accuracy of Bearing	± 15 Sec.	± 20 Sec.	± 30 Sec.	± 40 Sec.	In Relation to Source (closed traverse, radial or GPS)
Linear Distances Accurate to: (maximum allowable)	0.05 ft ± ± 0.05 ft per 1,000 ft	0.05 ft ± ± 0.1 ft per 1,000 ft	0.07 ft + ± 0.15 ft per 1,000 ft	0.1 ft + ± 0.2 ft per 1,000 ft	Applies when the Distance is not part of a Closed Traverse (radial or GPS)
Positional Tolerance and Positional Accuracy of any Monument (maximum)	0.1' + AC/15,000	0.1' + AC/10,000	0.1' + AC/7,500	0.2' + AC/5,000	AC = Length of Any Course* (closed traverse, radial or GPS)
Calculation of area - accurate and carried to nearest _____ (decimal place) of an acre (closed traverse, radial or GPS)	0.001 0.001 0.01 0.1	0.001 0.001 0.01 0.1	0.001 0.01 0.1 0.2	0.001 0.01 0.1 0.3	To 1 acre To 10 acres To 100 acres To 1,000 acres
Elevations for Boundaries Controlled by Tides, Contours, Rivers, etc. Accurate to:	0.2 ft.	0.3 ft.	0.4 ft.	0.5 ft.	Based on Accepted Local Datum (closed traverse, radial or GPS)
Location of Improvements, Structures, Paving, etc. (Tie Measurements)	± 0.1 ft.	± 0.2 ft.	± 0.5 ft.	± 1 ft.	(closed traverse, radial or GPS)
Adjusted Mathematical Closure to Survey (Minimum)	1:50,000	1:50,000	1:50,000	1:50,000	(closed traverse, radial or GPS)

\*Short courses in categories "A" and "B" may generate positional errors of less than 0.01 feet. A minimum course distance of 200 feet shall be used in calculating positional error.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 16:1068 (December 1990), amended LR 22:716 (August 1996), amended by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 27:1046 (July 2001), LR 30:1729 (August 2004), LR 37:2419 (August 2011).

### Chapter 31. Continuing Professional Development (CPD)

#### §3105. Requirements

A. - A.2. ...

B. During each biennial licensure renewal period, every professional land surveyor licensee is required to obtain 15 PDHs in land surveying related activities.

1. ...

2. A minimum of two PDHs shall be earned in the Standards of Practice for Boundary Surveys in Louisiana.

C. During each biennial licensure renewal period, each dual licensee shall obtain 30 PDHs; however, at least one-third of the PDHs shall be obtained separately for each profession.

1. ...

2. A minimum of two PDHs shall be earned in the Standards of Practice for Boundary Surveys in Louisiana.

3. ...

#### D Excess PDHs

1. ...

2. Excess PDHs may include, without limitation, those obtained in professional ethics, Standards of Practice for Boundary Surveys in Louisiana, Life Safety Code, building codes and/or Americans with Disabilities Act Accessibility Guidelines.

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:697.1.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 24:2152 (November 1998), amended by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 27:1047 (July 2001), LR 30:1730 (August 2004), LR 37:2420 (August 2011).

#### §3111. Determination of Credit

A. PDHs may be earned as indicated in §3113 for the following acceptable activities:

1. - 4. ...

5. authoring and publishing articles in engineering or land surveying journals; or authoring and publishing books related to engineering or land surveying;

A.6. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:697.1.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 24:2153



(November 1998), amended by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 27:1048 (July 2001), LR 30:1731 (August 2004), LR 37:2420 (August 2011).

### §3113. Units

A. - A.3. ...

B. PDH credit will be awarded as follows:

1. - 3. ...

4. authoring and publishing peer reviewed (refereed) articles/papers in engineering or land surveying journals; or authoring and publishing peer reviewed (refereed) books related to engineering or land surveying = 10 PDHs;

5. - 6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:697.1.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 24:2154 (November 1998), amended by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 27:1048 (July 2001), LR 30:1732 (August 2004), LR 37:2421 (August 2011).

Donna D. Sentell  
Executive Director

1108#039

## RULE

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

#### Alligator Regulations (LAC 76:V.701)

The Wildlife and Fisheries Commission does hereby amend the regulations to provide for cutting of raw alligator skins prior to tanning within state or shipment out of state, issuance of alligator harvest tags to nonresident landowners, deadlines for submission of wild alligator hunting season applications, disposal of alligator skins deemed to be of no commercial value, elimination of the three alligator limit for nonresident sport alligator hunters, replacement of alligator tags that are lost by alligator farmers, and clarify that wild alligators cannot be cut loose from hooks and lines for any purpose within the alligator regulations (LAC 76:V.701).

#### Title 76

### WILDLIFE AND FISHERIES

#### Part V. Wild Quadrupeds and Wild Birds

#### Chapter 7. Alligators

#### §701. Alligator Regulations

A. The Department of Wildlife and Fisheries does hereby establish regulations governing the harvest of wild populations of alligators and alligator eggs, raising and propagation of farmed alligators, tanning of skins and regulations governing the selling of hides, alligator parts and farm raised alligators. The administrative responsibility for these alligator programs shall rest with the department secretary; the assistant secretary, Office of Wildlife; and the Coastal and Nongame Resources Division.

1. Purpose. These regulations are to govern the taking, possession, selling, raising and propagation of alligators statewide, both in the wild and in captivity. They are enacted to prevent depletion or waste, while enhancing utilization of this renewable resource. These regulations are based upon

scientific study and population monitoring and are consistent with federal requirements to qualify alligators and alligator parts from Louisiana for international export under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Alligators in Louisiana are not endangered but their similarity of appearance to endangered crocodylian species requires controls on commerce to minimize illegal trafficking of these species and to regulate and maintain the wild population of alligators. These regulations provide rules to enhance alligator farming operations; establish the methods of alligator harvest; establish minimum facility requirements for alligator farming; regulate commerce in alligators, eggs and parts; streamline necessary reporting requirements; and, establish a regulated nuisance alligator control program.

2. Definitions. The following words and phrases for purposes of these regulations shall have the meaning ascribed to them in this section, unless the context wherein the particular word or phrase is used clearly indicates a different meaning.

*Alligator*—American alligator (*Alligator mississippiensis*).

*Alligator Egg Collection Permit*—a permit issued by the department allowing for the collection of alligator eggs on designated properties described as part of the permit. The permit will be signed by the secretary or his designee, the permittee and the landowner/land manager.

*Alligator Farm* (nongame quadruped)—an enclosed area, constructed so as to prevent the ingress and egress of alligators from surrounding public or private lands or waters and meeting other specifications and requirements set by the department, where alligators are bred, propagated, or raised as a commercial enterprise under controlled conditions. *Alligator farm* also includes alligator ranching wherein eggs are collected from the wild, and raised, pursuant to departmental license or permit.

*Alligator Farmer*—a properly licensed person who raises alligators under controlled conditions which prohibit free movement of the animals onto and off of the farm or controlled area, or who collects and sells wild alligator eggs, and who may harvest alligators under the supervision of the department. An alligator farmer must possess a valid nongame quadruped breeder's license.

*Alligator Hide Tag*—an official CITES serially numbered tag issued by the department.

*Alligator Hunter*—a properly licensed resident or nonresident person who takes wild alligators. Alligator hunters are divided into five classes:

i. *Commercial*—anyone who is a bona fide resident licensed by the department to take wild alligators after having filed application(s) approved by the department which authorizes the issuance of alligator hide tags to him;

ii. *Helper*—anyone who is a bona fide resident licensed by the department to act as an authorized agent of a commercial or nonresident landowner alligator hunter(s) in conducting alligator harvest activities. The helper may hunt independently of the commercial or nonresident landowner alligator hunter(s) he is assigned to assist. The helper's license must bear the name and license number of the commercial or nonresident landowner alligator hunter(s) authorizing the licensing of the helper;

iii. *Sport*—anyone who is licensed by the Department and guided by a commercial, nonresident landowner or helper alligator hunter(s) during alligator harvest activities; alligator hide tags cannot be issued to a sport license holder. Sport license holders may be a bona fide resident or a nonresident;

iv. *Nuisance*—a bona fide resident licensed alligator hunter who is contracted or otherwise selected by the department to remove designated nuisance alligators and who can be assigned alligator hide tags by the department;

v. *Nonresident Landowner*—anyone who is a nonresident licensed by the department to take wild alligators on his own property located within Louisiana, after having filed an application(s) approved by the department which authorizes the issuance of alligator hide tags to him.

*Alligator Part*—any part of the carcass of an alligator, except the hide and includes the bony dorsum plates, if detached from the tagged alligator hide.

*Alligator Parts Dealer*—any properly licensed person who deals in alligator parts other than hides and who:

i. buys unprocessed alligator parts from an alligator hunter, another parts dealer, or an alligator farmer for the purpose of resale; or

ii. manufactures within the state nonedible alligator parts into a finished product; or

iii. purchases unprocessed alligator meat or processes alligator meat for wholesale or retail sale.

*Alligator Parts Retailer*—any properly licensed person who purchases for retail sale finished alligator parts made from parts other than hides.

*Alligator Shipping Label*—a serially numbered green label issued by the department required on each shipment of alligators being transported out of the state.

*Alligator Skin or Hide*—whole or partial alligator skins, flanks, chalecos and bellies (including those bellies attached to or separated from the tail portion of the alligator skin). Once the tail portion of the skin is separated from the flanks, chaleco and belly, the tail is considered an alligator part.

*Alligator Tail*—includes the tail portion of the alligator skin once it is separated from the flanks, chaleco and belly. For the purposes of this Subsection, the alligator tail is considered an alligator part.

*Bona Fide Resident*—

i. any person who has resided in the state of Louisiana continuously during the twelve months immediately prior to the date on which he applies for any license and who has manifested his intent to remain in this state by establishing Louisiana as his legal domicile, as demonstrated with all of the following, as applicable:

(a). if registered to vote, he is registered to vote in Louisiana;

(b). if licensed to drive a motor vehicle, he is in possession of a Louisiana driver's license;

(c). if owning a motor vehicle located within Louisiana, he is in possession of a Louisiana registration for that vehicle;

(d). if earning an income, he has filed a Louisiana state income tax return and has complied with state income tax laws and regulations.

ii. As to a corporation or other legal entity, a *resident* shall be any which is incorporated or otherwise

organized under and subject to the laws of Louisiana, and as to which the principal place of business and more than 50 percent of the officers, partners, or employees are domiciled in Louisiana.

*Closed Season*—that period of time of a calendar year not specifically included in the open season.

*Commission*—The Louisiana Wildlife and Fisheries Commission.

*Common Carrier*—any agency or person transporting passengers or property of any description for hire.

*Confiscation*—the exercise of a right under the police power wherein property is seized and held pending court order if the seized material is nonperishable, or disposed of without judicial intervention if perishable.

*Consumer*—restaurants and other places where alligator, fish, shrimp, or other aquatic life is prepared for human consumption; or any person using alligator, fish, shrimp, or other aquatic life for bait or personal consumption.

*Department*—the Louisiana Department of Wildlife and Fisheries.

*Designated Collection Agent*—anyone who is permitted by the department to assist an alligator egg collection permittee during alligator egg collection.

*Dressing, Dressed Skins or Dressed Furs*—see *Tanning*.

*Finished Alligator Part*—any nonedible alligator part that has been completely processed from parts other than hides for retail sale.

*Fur Buyer*—anyone who buys whole nongame quadrupeds for the purpose of pelting, carcasses of fur bearing animals, raw furs or skins from fur trappers, alligator hunters, alligator farmers, fur buyers, or fur dealers and who sells to another fur buyer or fur dealer within the confines of the state or to a nonresident fur dealer licensed by the state of Louisiana in interstate commerce, or who acts as an agent of another fur buyer or fur dealer in this state in such purchase or sale. Fur buyers are divided into two classes, resident and nonresident. Resident fur buyers are those who are bona fide residents of this state. All others are nonresident fur buyers.

*Fur Dealer*—anyone who deals in whole nongame quadrupeds for the purpose of pelting, carcasses of fur bearing animals, raw furs and skins and who:

i. buys from a fur trapper, alligator hunter, or alligator farmer, either directly or indirectly, and ships or exports from this state, either directly or indirectly, the raw furs and skins so bought; or

ii. buys from a fur buyer or other fur dealer and exports from this state the raw furs and skins so bought; or

iii. buys from a fur trapper, alligator hunter, alligator farmer, fur buyer, or other dealer and sells such raw furs and skins for manufacturing into a finished product in this state; or

iv. manufactures such furs and skins into a finished product in this state, buying directly from a fur trapper, alligator hunter, alligator farmer, fur buyer, or fur dealer; or

v. transports raw furs or skins into this state for the purpose of sale within the state. Fur dealers are divided into two classes, resident and nonresident. Resident fur

dealers are those who are bona fide residents of this state. All others are nonresident fur dealers;

vi. converts raw alligator skins through the tanning process into finished or partially finished leather and/or converts raw (green or dried) fur pelts into dressed furs ready for manufacturing.

*Hatchling*—a young of the year alligator which is less than 23 inches in length.

*Hide*—see *Pelt*.

*Hook*—any curved or bent device attached to a line or pole for the purpose of taking alligators.

*Hunt*—in different tenses, attempting to take.

*Incubator*—an apparatus designed and used for the primary purpose of incubating alligator eggs.

*Land Manager*—any authorized person who represents the landowner.

*Landowner*—any person who owns land which the Department has designated as alligator habitat.

*Licensee*—any resident or nonresident lawful holder of an effective license duly issued under the authority of the Department.

*Nongame Quadruped*—alligators, beavers, bobcats, coyotes, gray foxes, minks, muskrats, nutrias, opossums, otters, raccoons, red foxes, skunks, and other wild quadrupeds valuable for their furs or skins.

*Nongame Quadruped Breeder*—a person properly licensed to engage in the business of raising, exhibiting and selling nongame quadrupeds on alligator or fur farms.

*Nongame Quadruped Exhibitor*—a person properly licensed to engage in the business of raising and/or exhibiting nongame quadrupeds.

*Nonresident*—any person who is not a bona fide resident as that term is defined by R.S. 56:8.

*Nuisance Alligator*—a specific (particular) alligator that poses a threat to human life or property.

*Open Season*—that period of time set by the Louisiana Wildlife and Fisheries Commission, during which wild alligators or their eggs may be lawfully taken.

*Out-of-State Shipping Seal*—a special locking device or seal supplied by the department and placed on or across a shipping container by department personnel prior to shipping out of state.

*Out-Of-State Shipping Tag*—an official, serially numbered tag, yellow in color, issued by the department required on each shipment of alligator hides shipped out of state.

*Part*—for purposes of this Section, a part is a division of a Subsection.

*Pelt*—the skin or hide of a quadruped.

*Pelting*—removing the skin and/or fur of a quadruped in such a manner as to render it marketable.

*Person*—includes any individual person, association, corporation, partnership, or other legal entity recognized by law.

*Pole Hunting*—the act of taking an alligator from a den with a hook pole or snagging device of any type and includes using such devices to induce an alligator to move from a den prior to taking.

*Possess*—in its different tenses, the act of having in possession or control, keeping, detaining, restraining, or holding as owner, or as agent, bailee, or custodian for another.

*Processed Alligator Part*—any part (and its resulting products) that has been removed from a legally taken alligator and for commercial purposes converted into a finished alligator part, or meat prepared and packaged for retail sale.

*Propagation*—the holding of live alligators for production of offspring.

*Raising*—the production of alligators under controlled environmental conditions or in outside facilities.

*Rearing*—see *Raising*.

*Resident*—see *Bona Fide Resident*.

*Secretary*—the secretary of the Louisiana Department of Wildlife and Fisheries.

*Skin*—see *Pelt*.

*Take*—in its different tenses, the attempt or act of hooking, pursuing, netting, capturing, snaring, trapping, shooting, hunting, wounding, or killing by any means or device.

*Tanning*—the conversion of alligator skins or fur pelts into an intermediate or finished form and includes the following: crust tanning alligator leather, dyeing alligator leather, glazing alligator leather, tanning fur pelts, shearing fur pelts, and dyeing fur pelts, and includes the dressing of skins and furs.

*Transport*—in its different tenses, the act of shipping, attempting to ship, receiving or delivering for shipment, transporting, conveying, carrying, or exporting by air, land, or water, or by any means whatsoever.

*Wildlife*—all species of wild vertebrates.

*Wildlife Management Area*—any area set aside, maintained, and supervised by the department for the purpose of managing and harvesting wild birds, wild quadrupeds, fish and other aquatic life under controlled conditions to afford maximum public hunting and fishing opportunity.

*Wildlife Refuge*—any area set aside and designated by the department as a refuge on which wild birds and animals are protected. Control of certain forms of wildlife may be conducted by the department.

### 3. General Rules

a. No person shall take, possess, purchase or sell alligators, alligator eggs, alligator hides, alligator parts, or goods manufactured from alligators, except as provided in these regulations and R.S. Title 56.

b. Each alligator, alligator hide, alligator egg, or alligator part taken or possessed in violation of these regulations shall constitute a separate offense.

c. Alligators or hides of alligators harvested in Louisiana shall be tagged in accordance with provisions as prescribed in Subparagraph A.6.e of this Section and deviation from those requirements shall be a violation and subject hides to confiscation. Violation of this Subparagraph is a Class Four violation as described in R.S. Title 56.

d. Pole hunting is prohibited. It is legal for a hunter to retrieve a shot alligator with a hook pole or to retrieve with a hook pole an alligator taken on a hook and line. Violation of this Subparagraph is a Class Two violation as described in R.S. Title 56.

e. An alligator hunter must possess on his person one or more current alligator hide tags issued for the property on which he is hunting; and if participating in a joint hunting operation at least one licensed hunter needs to

possess current hide tags issued for the property on which they are hunting among a group of licensed hunters who are physically present in the same location. Violation of this Subparagraph is a Class Two violation as described in R.S. Title 56.

f. No person shall release any alligator from any taking device for any purpose without first dispatching the alligator, except as provided in Subparagraph A.5.e. After the alligator is removed from the taking device the hide tag shall be properly attached immediately upon possession. Violation of this Subparagraph is a Class Four violation as described in R.S. Title 56.

g. Taking or collection of any wild alligator illegally is strictly prohibited. Violation of this Subparagraph is a Class Four violation for each alligator taken as described in R.S. Title 56. All alligators taken in violation of this Subparagraph shall be confiscated and in addition to all other penalties provided herein, all alligator licenses of any type held by the offender(s) shall be revoked for a period of three calendar years. If violation(s) of this Subparagraph involves a farm operation, no alligators shall be raised or propagated on the offender's facilities for a period of three calendar years. Any live alligator(s) confiscated pertinent to any violation of this Subparagraph must be returned to the wild when appropriate. Selection of the release site and time of year of the release shall be accomplished only after consultation with and in agreement with biological staff of Coastal and Nongame Resources Division.

h. The shipment of alligator eggs out of state is prohibited except where special scientific permits have been obtained in advance from the department which specify all such shipments. Violation of this Subparagraph is a Class Four violation as described in R.S. Title 56.

i. No person, firm, or corporation shall transport into this state or possess whole alligator(s) with skin on, alligator parts or alligator skins/hides unless that person, firm or corporation is a Louisiana licensed alligator parts dealer or fur dealer and is in immediate possession of an alligator parts dealer's license or fur dealer's license, except that a copy of such license shall be sufficient during transportation only. Persons, firms or corporations violating this Subparagraph shall be subject to the penalties as provided in R.S. Title 56:34, a Class Four violation; except that when such a violation involves alligator parts only, such offenses shall be subject to the penalties as provided in R.S. Title 56:32, a Class Two violation.

j. It is unlawful to ship alligator eggs into the state of Louisiana unless they are to be used for department sponsored scientific studies and these shipments shall have prior written department approval. Violation of this Subparagraph is a Class Four violation as described in R.S. Title 56.

k. The shipment of live alligators or alligator eggs out of the United States is strictly prohibited unless they are used for department sponsored scientific studies with an accompanying authorization signed by the secretary. The transfer of ownership of live alligators out of their natural range for commercial purposes is strictly prohibited. However, this Subparagraph does not prohibit a licensed Louisiana alligator farm from raising alligators of Louisiana origin in a nonrange state provided the nonrange farm is in complete compliance with all applicable state(s) and federal

regulations. Violation of this Subparagraph is a Class Three violation as described in R.S. Title 56.

l. There is levied a severance tax of \$0.25 on each alligator hide taken from within the state, payable to the state through the department by the alligator hunter or alligator farmer shipping or taking his own catch out of state, or shipping to an instate taxidermist, or by the dealer shipping skins or hides out of state or tanning alligator skins in Louisiana. Violation of this Subparagraph is a Class Two violation as described in R.S. Title 56.

m. An alligator hunter or alligator farmer may give alligator parts to anyone for personal use. Any part of an alligator shall have affixed thereto the name, address, date, hide tag number, and the license number of the person donating the alligator part(s). This information shall be legibly written in pen or pencil on any piece of paper or cardboard or any material which is attached to the part(s) or to the container enclosing the part or parts. This information must remain affixed until the part(s) has been stored at the domicile of the possessor. Violation of this Subparagraph is a Class Two violation as described in R.S. Title 56.

n.i. R.S. 56:280, passed in the regular session of the 1992 Louisiana Legislature established a state policy which protects white or albino alligators and except under department permit prohibits the taking of white or albino alligators from the wild.

ii. Conditions under which any alligator that is white or albino may be taken from the wild and under official department permit include:

(a) landowners or licensed alligator farmers or ranching operators may capture live and unharmed a white or albino alligator for its own protection. All such instances of possession shall be reported immediately to the department;

(b) any white or albino alligator hatchling produced from wild collected eggs authorized by a department alligator egg collection permit will remain in the possession of such licensed operators. Any white or albino hatchling must be reported immediately upon hatching to the department on a standard activity report form;

(c) any person who unintentionally takes from the wild any alligator that is white or albino by hook and line shall immediately report its presence and location to the department. Department personnel of the Coastal and Nongame Resources Division will on a case by case basis determine the disposition of any such white or albino alligator which is unintentionally hooked.

iii. Any white or albino hatchling produced from a licensed breeding pen will remain in the possession of such licensed operators but must be reported immediately upon hatching to the department on a standard activity report.

iv. It shall be a violation if any person intentionally takes from the wild any alligator that is white or albino by any means.

v. Violation of R.S. 56:280 shall subject the violator to a fine of not less than \$10,000 and imprisonment for not less than 6 months or more than 12 months, or both.

o. Alligator meat and parts may be shipped in containers that are sealed and the parts identified to the CITES tag of origin. A fully executed alligator hunter, farmer, or parts dealer Alligator Parts Sale or Transaction Form and Shipping Manifest shall meet the U.S. Fish and

Wildlife Service parts identification requirements, provided such form(s) is/are prominently attached to the outside of each shipping container. Alligator meat/parts shipped to another state must meet applicable state/federal requirements of the receiving state. Alligator meat/parts exported from the United States must meet the requirements of the U.S. Fish and Wildlife Service as well as those of the receiving country. Alligator skulls being exported shall carry a "tag" containing the CITES tag number and the hunter's name and license number. The skull must also be physically marked with the number of the original CITES tag used for the hide of the individual alligator. Violation of this Subparagraph is a Class Three violation as described in R.S. Title 56.

p. For the purpose of bona fide educational or promotional functions, including but not limited to school activities, civic groups, fairs and festivals within the state of Louisiana, an alligator farmer/rancher or his designee may transport his own live farm alligators or alligator eggs to such function without the need for a special permit from the department while in possession of a valid nongame quadruped breeder's or exhibitor's license or copy thereof. Such farmer/rancher shall not barter, trade, exchange or attempt to barter, trade or exchange live alligator(s) or alligator eggs while transporting to/or attending such function.

#### 4. Licenses, Permits and Fees

a.i. The licenses and fees required for activities authorized by these regulations are as prescribed under provisions of R.S. Title 56, or as prescribed in these regulations, and are:

(a). \$25 for a resident alligator hunter's license; including commercial, helper, sport, and nuisance classes;

(b). \$150 for a nonresident alligator hunter's license; including landowner and sport classes;

(c). \$25 for a resident fur buyer's license;

(d). \$100 for a nonresident fur buyer's license;

(e). \$150 for a resident fur dealer's license (\$500 deposit required);

(f). \$300 for a nonresident fur dealer's license (\$1,000 deposit required);

(g). \$10 for a nongame quadruped exhibitor's license;

(h). \$25 for a nongame quadruped breeder's license;

(i). \$50 for an alligator parts dealer license;

(j). \$5 for an alligator parts retailer license;

(k). \$4 for each alligator hide tag;

(l). \$4 for each whole alligator leaving the state as alligator shipping label fee;

(m). \$0.25 severance tax for each alligator hide taken from within the state;

(n). \$25 for a designated agent collection permit.

ii. All license types prescribed above except nongame quadruped exhibitor and breeder expire annually on June 30. Nongame quadruped exhibitor and breeder licenses expire annually on December 31.

b. No person may take, attempt to take, or possess a wild alligator in this state during the open season for taking wild alligators unless he or she has acquired and possesses an alligator hunter's license. An alligator hunter must have in possession a valid alligator hunter license to take or sell alligators, their skins, or parts. Violation of this

Subparagraph is a Class Three violation as described in R.S. Title 56.

c. No person may engage in the business of buying alligators for the purpose of skinning or buying and selling alligator skins unless he has acquired a resident or nonresident fur buyers license. No resident or nonresident fur buyer shall ship furs, alligators, or alligator skins out of state. Violation of this Subparagraph is a Class Three violation as described in R.S. Title 56.

d. No person may engage in the business of buying alligators for the purpose of skinning or buying and selling alligator skins or shipping alligator skins out of state or tanning alligator skins within the state unless he has acquired a resident or nonresident fur dealers license. Violation of this Subparagraph is a Class Three violation.

e. No person may engage in the business of raising and/or exhibiting alligators unless he or she has acquired and possesses a valid nongame quadruped exhibitor license. Violation of this Subparagraph is a Class Three violation as described in R.S. Title 56.

f. No person may engage in the business of raising, breeding, collecting and selling alligator eggs from the wild, propagating, exhibiting and selling alligators alive or selling their parts, and killing and transporting them and selling their skins and carcasses unless he or she has acquired and possesses a valid nongame quadruped breeder license and complies with Paragraphs A.14 and 15 of this Section. Violation of this Subparagraph is a Class Three violation as described in R.S. Title 56.

g. No person shall engage in the business of buying and selling unprocessed alligator parts unless he has acquired and possesses a valid alligator parts dealer license. Violation of this Subparagraph is a Class Two violation as described in R.S. Title 56.

h. Each retailer purchasing for retail sale, finished alligator parts made from parts other than hides, shall secure from the department an alligator parts retailer license prior to commencing business. Violation of this Subparagraph is a Class Two violation as described in R.S. Title 56.

i. No person shall remove and possess alligator eggs from wild nests unless he has acquired and possesses a valid nongame quadruped breeder license or a valid designated agent collection permit and also has in his possession a valid alligator egg collection permit. Egg collection permits will only be issued to those persons who demonstrate competency in egg collection and handling, have necessary equipment accessible and comply with all department requirements as described in Paragraph A.14 of this Section. Violation of this subparagraph is a Class Four violation as described in R.S. Title 56.

j. No person shall ship or transport alligators out of the state without first applying for and receiving an alligator shipping label which shall be affixed to each shipment of alligators and is properly completed and validated by department personnel. Violation of this Subparagraph is a Class Three violation as described in R.S. Title 56.

k. Every alligator hunter or alligator farmer shipping or transporting his own catch of alligator skins out of state is liable for the alligator hide tag fee and the severance tax thereon, and shall apply for an official out of state shipping tag to be attached to the shipment and shall pay the alligator hide tag fee and the severance tax prior to

shipment. Violation of this Subparagraph is a Class Two violation as described in R.S. Title 56.

1. Valid holders of alligator hunter license, nongame quadruped breeder license, fur dealers license and alligator parts dealer license must comply with the receiving state/country requirements and with federal licensing, tagging and permit requirements to engage in interstate and international commerce involving alligators, alligator hides, alligator parts and fully manufactured alligator hide products. Violation of this Subparagraph is a Class Two violation as described in R.S. Title 56.

5. Wild Harvest Methods

a. Alligators taken from the wild may be removed from hook and line, and other legal capture devices which may be used, only during daylight hours, between official sunrise and official sunset. Violation of this Subparagraph is a Class Four violation as described in R.S. Title 56.

b. There are no size restrictions on wild alligators taken during the general open season.

c.i. Legal methods for taking alligators in the wild are as follows:

(a). hook and line;

(b). long (including compound) bow and barbed arrow; and

(c). firearms (the possession of shotguns is prohibited while hunting or taking wild alligators; except as authorized by the department for taking of nuisance alligators by nuisance alligator hunters).

ii. Violation of this Subparagraph is a Class Two violation as described in R.S. Title 56.

d. Hooks and arrows may be used only when a line of at least 300-pound test is securely attached to the hook or head of the arrow in such a manner to prevent separation from the hook or head until the carcass is retrieved. The other end of the line must be attached to a stationary or floating object capable of maintaining the line above water when an alligator is attached. Violation of this Subparagraph is a Class Two violation as described in R.S. Title 56.

e. Alligator hunters shall inspect their hooks and lines and remove captured alligators daily. All hooks and lines shall be removed when an alligator hunter's quota is reached. In the event an alligator is hooked and the hunter's quota has been reached the hunter must release the alligator in the most humane method possible. Violation of this Subparagraph is a Class Two violation as described in R.S. Title 56.

f. Baited hooks and lines may be set no more than 24 hours prior to the general open season and shall be removed no later than sunset of the last day of the open season. Violation of this Subparagraph is a Class Two violation as described in R.S. Title 56.

g. No person possessing alligator hide tags issued for privately-owned land or water may take alligators on adjacent publicly-owned water unless the taking device is anchored to privately-owned land or the person is on privately-owned land when the taking occurs, provided that any alligator captured on a legal taking device that is anchored to privately-owned land or held by a person on privately-owned land may be dispatched from a floating craft on public water. Violation of this Subparagraph is a Class Two violation as described in R.S. Title 56.

h. A person possessing alligator hide tags for publicly-owned areas may take alligators by legal means from a floating craft on public water for which the tags are issued.

6. Alligator Hide Tag Procurement and Tagging Requirements

a. Alligator hide tags may be obtained as follows and only to properly licensed alligator hunters and nongame quadruped breeders.

b. Landowners, Land Managers and Hunters. Upon application to the department on forms provided for tag issuance, applications for alligator tag allotments will be taken annually beginning June 1. For alligator hunters submitting applications with new/additional properties, applications are due by August 20; for alligator hunters submitting an application for property previously hunted, applications are due by the day before the season opens. Tags will not be issued after close of business on the day prior to the season opening date.

i. Maximum tag issuance to individual landowners, land managers, or their hunters shall be determined solely by the department. Landowners, land managers, or their hunters shall certify total acreage owned or represented on a form prescribed by the department at the time of application. The location and acreage of the property must be provided which includes parish, township, range and section delineation figures.

ii. Land managers and hunters must present a signed document from the landowner verifying their selection to represent that landowner and the total acreage represented to obtain hide tags.

iii. Alligator hide tags shall be issued to licensed alligator hunters without charge. Numbered alligator hide tags shall only be issued in the name of the license holder and are nontransferable. All unused alligator tags shall be returned within 15 days following the close of the season.

c. Alligator Farmers. Alligator hide tags shall be issued to properly licensed alligator farmers without charge upon request at any time at least two weeks prior to scheduled harvesting, subject to verification of available stock by department personnel. All unused alligator tags shall be returned to the department within 15 days following the last day of the year that issued tags are valid.

d. If an alligator hunter is cited for hunting alligators out of season, or at night, or on property other than that for which hide tags were issued, all unused hide tags and alligators in possession shall be confiscated and the violator's alligator hunting license shall be revoked. Violation of this Subparagraph is a Class Four violation as described in R.S. Title 56.

e. A hide tag shall be properly attached and locked using the tag's locking device in the alligator's tail immediately upon possession by an alligator hunter. Alligator farmers, fur buyers and fur dealers may wait until farm raised alligators are skinned prior to tagging, but under no circumstances can the tag be attached using the locking device more than 48 hours after dispatching the alligator during the open wild alligator harvest season, or more than seven days after dispatching the alligator outside of the open wild alligator harvest season. Live or dead farm raised alligators may be transported with their accompanying tags

from a licensed alligator farm to a licensed processing facility, however each shipment shall be accompanied with the exact number of alligator hide tags. In the event that an alligator tag contains a factory defect rendering it unusable for the purpose intended or becomes detached from an alligator or hide, the tag must be reattached to the tail of the alligator/hide. The department will be responsible for the replacement of reattached tags prior to shipping out-of-state or prior to tanning within the state. It shall be unlawful to tag or attempt to tag an alligator with a tag that has been locked prior to the taking. Locked tags may be replaced upon request at the discretion of the department. The alteration of hide tags is strictly prohibited and will result in the confiscation of all tags and alligators/hides and the revocation of the violator's alligator hunting license. Violation of this Subparagraph is a Class Four violation as described in R.S. Title 56.

f. In the event that an alligator hide tag cannot be located when in the possession of a Buyer/Dealer, then the following procedure shall be followed.

i. Following discovery of an untagged alligator or alligator hide by the buyer/dealer, they shall notify the Department of Wildlife and Fisheries, Coastal and Nongame Resources Division within 24 hours and the Department of Wildlife and Fisheries will place a state tagging device on the alligator or alligator hide.

ii. Upon discovery of an untagged alligator or alligator hide by Department of Wildlife and Fisheries personnel, such personnel shall place a state tagging device on the alligator or alligator hide.

iii. The state tagged alligator or alligator hide will remain in the possession of the buyer/dealer following the placement of the state tagging device until such time as the hide tag is located or until December 31st of that year, whichever comes first. Upon presentation of the missing hide tag and the corresponding buyer/dealer record which documents a match between the tag number and the alligator/hide being held, and if the Department of Wildlife and Fisheries then confirms that such tag number has not been previously shipped, the Department of Wildlife and Fisheries shall attach a replacement alligator hide tag.

iv. If the buyer/dealer does not locate the missing hide tag following the placement of the State tagging device by the end of the allotted time period but is able to identify the tag number on a Department of Wildlife and Fisheries issued or approved buyer/dealer record which documents a match between the tag number and the skin being held, and if the Department of Wildlife and Fisheries then confirms that subject tag number has not been previously shipped, the Department of Wildlife and Fisheries may, in its discretion, issue a replacement alligator hide tag.

v. The failure of the buyer/dealer to produce the correct hide tag and/or correct documentation by the end of the allotted time period shall constitute a violation of this Subparagraph.

vi. The previous or subsequent attachment to an alligator or alligator hide of the missing hide tag as described above shall constitute a violation of this Subparagraph.

vii. Violation of this Subparagraph is a Class Four violation as described in R.S. Title 56.

## 7. Open Season, Open Areas, and Quotas

### a. Open seasons are as follows.

i. The state shall be divided into the east and west alligator hunting zones by the following boundary: beginning at the southwestern most part of Point Au Fer Island thence North along the western boundary of Terrebonne Parish to the Atchafalaya River, thence north along the Atchafalaya River to the East Atchafalaya Protection Levee, thence north along the East Atchafalaya Protection Levee, to Interstate 10, thence east along Interstate 10 to Interstate 12, thence east along Interstate 12 to Interstate 55, thence north along Interstate 55 to the Mississippi state line. The season for taking alligators in the wild shall open on the last Wednesday of August in the East Zone and the first Wednesday of September in the West Zone and will remain open for 30 days thereafter in each zone. The secretary shall be authorized to close, extend, delay, or reopen the season as biologically justifiable.

ii. Nuisance control hunters may take nuisance alligators at any time as prescribed by the department.

iii. Farm raised alligators may be taken at any time following the issuance of hide tags by the department.

iv. The open season for collection of alligator eggs from the wild shall be from May 15 through September 1 of each calendar year. Violation of this Clause is a Class Four violation as described in R.S. Title 56.

### b. The open areas are as follows.

i. For the general open season, those areas designated by the biological staff of the department as alligator habitat and which can sustain an alligator harvest.

ii. The department may select public lakes and lands for an experimental alligator hunting program. The harvest will be controlled by a tag allotment for each lake as determined by department personnel. Applicants for public lake hunting must be 16 years of age or older. Applications must be received by the date specified on the annual application form. A public drawing will be held to select hunters. An alligator hunter can receive tags for and hunt on only one public lake per season. The tag quota for each lake and hunter will be established by the biological staff of the department. Alligator tags issued on public lakes and lands are nontransferable.

iii. Wild alligators in the remainder of the state may be taken only under provisions as prescribed by the department.

iv. The open alligator egg collection season shall include those areas designated by the biological staff of the department as alligator habitat which can sustain an egg collection harvest and egg quotas will be determined by department biologists.

c. The daily and season quota is equal to the number of valid alligator hide tags that a licensed alligator hunter possesses. Violation of this Subparagraph is a Class Four violation as described in R.S. Title 56.

d. Harvest rates will be calculated annually by department personnel based on biological data. Alligator hide tag allotments will be established prior to issuance of alligator hunting licenses.

### 8. Possession

a. No person shall possess alligators or alligator hides in Louisiana without valid official tags properly

attached in the tail using the locking device as prescribed in Subsection A.6.e. Violation of this Subparagraph is a Class Four violation as described in R.S. Title 56.

b. Alligator farmers may request hide tags or shipping labels from the department to be used on farm-raised alligators that have died and may hold those alligators in freezers until receipt of the requested hide tags or shipping labels. These alligators may be held in freezers for a maximum of 60 days prior to disposal. All farm raised alligators 24 inches and greater in length that die may be skinned and tagged with an alligator hide tag within 48 hours of death during the open wild alligator harvest season, or within 7 days of death outside of the open wild alligator harvest season. Violation of this Subparagraph is a Class Three violation as described in R.S. Title 56.

c. No person other than a licensed alligator hunter, licensed alligator farmer, licensed fur buyer or licensed fur dealer may possess a tagged or labeled alligator, a tagged raw or salted hide of an alligator at any time, provided that legally documented tagged or labeled alligators or tagged hides may be possessed without license while in transit, or during processing for tanning or taxidermy. However, properly tagged and documented alligators or hides may be stored at any location at the owner's discretion. Violation of this Subparagraph is a Class Four violation as described in R.S. Title 56.

d. No person other than a licensed alligator farmer or licensed nongame quadruped exhibitor shall possess live alligators at any time other than by a permit issued by the department upon request for use in displays and educational purposes, and by holders of valid department issued permits for scientific purposes. Live, farm raised alligators and their accompanying alligator hide tags may be held for processing by a properly licensed alligator skinning facility without a license or permit. Violation of this Subparagraph is a Class Four violation as described in R.S. Title 56.

e. No person other than a licensed alligator farmer or licensed nongame quadruped exhibitor shall possess alligator eggs at any time other than department permitted designated collection agents assisting a licensed and permitted alligator farmer during wild egg collection, or a holder of a valid department issued permit for scientific purposes. Violation of this Subparagraph is a Class Four violation as described in R.S. Title 56.

f. Any alligators hatched from scientific permits issued by the department shall be returned to the wild under departmental supervision following completion of the research project. Violation of this Subparagraph is a Class Two violation as described in R.S. Title 56.

#### 9. Importation, Exportation, Purchase, and Sale

a. Live alligators may be brought into the state only if the person, firm or corporation bringing the alligators into the state has obtained written permission from the department. Violation of this Subparagraph is a Class Four violation as described in R.S. Title 56.

b.i. All alligators, alligator hides (raw or salted), or parts of alligators possessed, sold, purchased, exported, imported, or brought into the state from another state shall be accompanied by documented evidence that they were lawfully taken. Documented evidence shall consist of, but not be limited to:

(a). a resource user license or permit number allowing the taking of alligators and tags or other identification required by the state or country of origin shall be firmly attached to the alligator, alligator hide, or parts of alligators; and

(b). a tag or label is affixed to the outside of any package or container of alligators, alligator hides, or alligator parts that specifies type of contents, indicates quantity contained, and lists applicable license or permit numbers.

ii. Violation of this Subparagraph is a Class Two violation as described in R.S. Title 56.

c. Purchases of alligators, alligator hides, alligator eggs, and alligator parts are restricted as follows.

i. A licensed alligator hunter may not purchase alligators or alligator hides from anyone.

ii. A licensed fur buyer may purchase whole alligators or alligator hides from a Louisiana licensed alligator hunter, licensed alligator farmer, licensed fur dealer, or another fur buyer.

iii. A licensed fur dealer may purchase whole alligators or alligator hides from a licensed alligator hunter, licensed alligator farmer, fur buyer or another fur dealer.

iv. A licensed alligator farmer may purchase live alligators only from another licensed alligator farmer (with a department approved Alligator Transfer Authorization Permit) or the department.

v. An alligator farmer may purchase alligator eggs only from another alligator farmer, a landowner/land manager (with an approved department alligator egg collection permit), or the department.

vi. A licensed alligator parts dealer may purchase alligator parts from a licensed alligator hunter, alligator farmer, another alligator parts dealer, or the department.

vii. A licensed alligator parts retailer may purchase finished alligator parts for retail sales.

d. Sales of alligators, alligator eggs, and alligator parts are restricted as follows.

i. A licensed alligator hunter may sell alligators, alligator hides, or alligator parts taken by the licensee during the general open season to anyone who may legally purchase.

ii. A licensed alligator farmer may sell alligators, alligator eggs, alligator hides, or alligator parts to anyone who may legally purchase. The sale of alligator eggs or live alligators shall only occur following the issuance of a Transfer Authorization Permit. Application for the permit shall be made at least two weeks prior to the transfer.

iii. A licensed fur buyer may sell whole alligators or alligator hides to a fur dealer or another fur buyer within the confines of the state.

iv. A licensed fur dealer may sell whole alligators or alligator hides to anyone who may legally purchase.

v. A licensed alligator parts dealer may sell alligator parts, other than hides, to anyone.

vi. A licensed alligator parts retailer may sell finished alligator parts to anyone.

e. Legally tagged and documented alligators, alligator hides, and parts of alligators taken in Louisiana may be shipped out of state or exported by alligator hunters, alligator farmers, fur dealers and alligator parts dealers



subject to Paragraph A.11 of this Section (relating to report requirements) provided that no live alligators or eggs originating in Louisiana may be exported outside of their natural range without specific department authorization and the concurrence of the United States Fish and Wildlife Service, to be used only for scientific purposes. Violation of this Subparagraph is a Class Three violation as described in R.S. Title 56.

f. A special permit is required of anyone who sells alligator eggs, or live alligators. Violation of this Subparagraph is a Class Four violation as described in R.S. Title 56.

#### 10. Nuisance Alligator Control

a. Nuisance alligator hunters will be selected by the department with proper screening by enforcement personnel in the region of appointment. Selection may be based upon recommendations received from the local governing body. Applicants with prior alligator hunting violations will be rejected.

b. Nuisance alligator hunters shall purchase a valid alligator hunter license and are bound by all laws, rules and regulations governing alligator hunting with the exception that nuisance alligators may be taken at anytime.

c. Nuisance alligator complaints will be verified by department personnel prior to being approved for removal.

d. Tags will be issued without charge to nuisance alligator hunters. Nuisance alligator hunters will attempt to catch nuisance alligators and relocate to natural habitat selected by the department. It is unlawful for any nuisance alligator captured alive to be sold or otherwise disposed of on an alligator farm. Alligators and alligator parts taken under these provisions may be retained and sold by the nuisance alligator hunter as any other legally taken wild alligator or alligator part. Violation of this Subparagraph is a Class Four violation as described in R.S. Title 56.

e. Nuisance alligator hunters may take alligators by any means prescribed by the department. Failure to comply with departmental instructions may result in immediate termination of the individual's participation in the nuisance alligator program. Violation of this Subparagraph is a Class Two violation as described in R.S. Title 56.

#### 11. Report Requirements

a. Report forms provided by or approved by the department must be completed and filed with the department by all persons who have been issued an alligator hunter's license, fur buyer's license, fur dealer's license, nongame quadruped exhibitor's license, nongame quadruped breeder's license, alligator parts dealer's license, or alligator egg collection permit in accordance with this Paragraph. Reports shall include but not be limited to the information specified in this Paragraph.

b.i. Alligator hunters receiving hide tags from the department are responsible for disposition of all issued tags and must:

(a). complete an official alligator parts transaction form furnished by or approved by the department for each alligator part transaction. These forms shall be submitted to the department at the end of the calendar year;

(b). complete an official lost tag form, furnished by the department for any hide tags lost or stolen. These forms shall be submitted to the department within 15 days

following the close of the season. Lost or stolen tags will not be replaced;

ii. All unused tags must be returned to the department within 15 days following the close of the season;

iii. Each licensed alligator hunter disposing of one or more tagged alligators or alligator skins deemed to be of no value, must:

(a). remove the CITES alligator tag(s) from each alligator/alligator skin at the time of disposal;

(b). return to the department all CITES alligator tags removed from disposed of alligators/alligator skins within 15 days following the close of the season;

(c). provide the department total lengths by corresponding CITES tag number of each alligator/alligator skin so disposed of within 15 days following the close of the season.

iv. The department must be notified of any trophy skins not sold to commercial buyers or dealers within 30 days following the close of the season, on official forms provided by or approved by the department.

v. Each licensed alligator hunter selling alligator parts to a person or a restaurant shall provide that person with a bill of sale for each transaction.

vi. All records of commercial transactions involving alligator parts by alligator hunters shall be available for inspection by the department.

vii. The alligator hide tag fee and severance tax shall be collected by the department from the alligator hunter who is shipping his own alligators or raw alligator skins, or who intends to custom tan, or use for taxidermy, the alligators or raw skins.

viii. Violation of this Subparagraph is a Class Two violation as described in R.S. Title 56.

c. A nuisance alligator hunter shall comply with the same report requirements as a commercial alligator hunter and complete any other reports required by the department. Violation of this requirement shall result in immediate termination of nuisance alligator hunter status. Violation of this Subparagraph is a Class Two violation as described in R.S. Title 56.

d.i. Alligator farmers receiving hide tags from the department are responsible for disposition of all issued tags and must:

(a). complete an official alligator parts transaction form, furnished by or approved by the department for each alligator parts transaction. These forms shall be submitted to the department along with the annual report. Violation of this Clause is a Class Two violation as described in R.S. Title 56;

(b). complete an official lost tag form, furnished by the department, for any hide tags lost or stolen. These forms shall be submitted to the department within 15 days following the last day of the year that issued tags are valid. Violation of this Clause is a Class Two violation as described in R.S. Title 56.

ii. All unused hide tags must be returned to the department within 15 days following the last day of the year that issued tags are valid. Violation of this Clause is a Class Two violation as described in R.S. Title 56.

iii. Each alligator farmer in possession of one or more tagged farm alligator skins deemed to be of no value,

must notify the department of the tag number and belly width of each farm alligator skin and must arrange for delivery of the farm alligator skin(s) to the department. Department personnel will remove the CITES alligator tags and dispose of the farm alligator skins. Violation of this Clause is a Class Two violation as described in R.S. Title 56.

iv. Each alligator farmer in possession of one or more tagged farm alligators deemed to be of no value, must notify the department of the tag number and belly width of each farm alligator prior to disposal of the alligator. Alligator farmers must remove the CITES alligator tag(s) at the time of disposal and immediately return the tag(s) to the department. Violation of this Clause is a Class Two violation as described in R.S. Title 56.

v. Each alligator farmer shall report annually, no later than December 1, on an official form provided by the department, all activities that have occurred on the farm for the past year including but not limited to the number of live alligators as of that date, separated by sizes, the number of eggs collected and hatched, the purchase and sale of alligators, hides, and parts for the past year and the numbers of alligators lost. Failure to complete this form properly and completely will result in nonrenewal of the nongame quadruped breeder's license. Violation of this Clause is a Class Three violation as described in R.S. Title 56.

vi. Each licensed alligator farmer selling alligator parts to a person or a restaurant shall furnish that person with a bill of sale for each transaction. Violation of this Clause is a Class Two violation as described in R.S. Title 56.

vii. Each alligator farmer collecting alligator eggs, hatching alligator eggs, selling alligators for processing, or selling alligator skins shall submit completed forms as provided by the department within 10 days following completion of the activity. Violation of this Clause is a Class Three violation as described in R.S. Title 56.

viii. The alligator shipping label fee or the alligator hide tag fee and the severance tax shall be collected by the department from the alligator farmer who is shipping alligators or raw alligator skins, or who intends to custom tan, or use for taxidermy, the alligators or raw skins.

e.i. Fur buyers, fur dealers, alligator farmers and alligator hunters engaged in the business of buying and/or selling whole alligators or alligator hides must keep within the state a complete record on forms provided by or approved by the department, all purchases and sales of whole alligators or alligator hides as described in R.S. Title 56; and

ii. every fur buyer, fur dealer, alligator farmer or alligator hunter having undressed alligator hides in his possession shall file with the department within 60 days of purchase or within 60 days of tagging or prior to shipping out of state or prior to tanning skins in Louisiana, whichever occurs first, a complete report, on forms provided by or approved by the department, a detailed description of alligator hides to be shipped or tanned. At the time of shipment or prior to tanning whole alligator skins, department personnel will inspect whole hides and replace any broken or reattached tags. Department personnel will issue the appropriate number of yellow shipping tags, one for each shipment. At that time, department personnel will affix a seal or locking device to each container. It shall be a violation of this Subparagraph for any person other than

department personnel or federal personnel to reopen any sealed or locked container. In conjunction with the inspection and prior to department issuance of shipping tag(s) and seal(s) or locking device(s), department personnel must collect:

(a). all completed buyer/dealer records for skins in each shipment;

(b). official shipping manifest including total length in inches (or feet and inches) referenced to CITES tag number of each whole wild skin in shipment and including total belly width in centimeters (measured at the fifth scute) referenced to CITES tag number of each whole farm raised alligator skin in shipment. A fully executed (filled out) shipping manifest containing all information required in the buyer/dealer record may be substituted with department approval for the buyer/dealer record requirement on farm raised alligator skins;

(c). stub portion of yellow shipping tag completely filled-out;

(d). severance tax and alligator hide tag fees owed by alligator hunter, alligator farmer or fur dealer.

iii. Prior to cutting raw alligator skins into pieces, every fur buyer, fur dealer, alligator farmer or alligator hunter desiring to cut raw skins into pieces (flanks, bellies, or chalecos), must request department personnel to inspect the whole alligator hides and (with appropriate assistance) apply CITES tags to each flank, chaleco, and belly so separated. Prior to tagging the flanks, chaleco and belly, department personnel must receive an official manifest including measurement (as specified below) of each skin. For wild skins, the total length in inches (or feet and inches) referenced to the CITES tag number of each whole wild skin to be cut into pieces must be provided. For farm raised alligators skins, the total belly width in centimeters (measured at the fifth scute) referenced to the CITES tag number of each whole farm raised alligator skin to be cut into pieces must be provided. Prior to cutting the raw alligator skin, CITES tags will be attached to each flank and chaleco (tag applied to each hind leg area), and to each belly if either is to be separated from the tail. Once the tail portion of the skin is separated from the flanks, chaleco and belly, the original CITES tag must be removed and returned to the department within 15 days of the cutting of the tail.

iv. Every fur dealer, alligator farmer or alligator hunter prior to shipping out of state or prior to tanning in state, partial alligator skins (flanks, bellies or chalecos) must provide an official shipping manifest listing a description of the partial alligator skins in the shipment along with the CITES tag number for each partial skin piece, referenced to the original CITES tag number that was placed on the wild alligator or farm raised alligator when harvested. Department personnel will review the manifest for accuracy and determine the number of original CITES tags referenced for the first time in order to assess the amount of severance tax and alligator hide tag fees owed by the shipper. Shipper will be thus informed by the department within 10 working days of receiving the official shipping manifest.

v. At the time of shipment or prior to tanning, department personnel will inspect alligator skin pieces and replace any broken or reattached tags. Department personnel will issue the appropriate number of yellow shipping tags, one for each shipment. At that time, department personnel

will affix a seal or locking device to each container. It shall be a violation of this Subparagraph for any person other than department personnel or federal personnel to reopen any sealed or locked container. In conjunction with the inspection and prior to department issuance of shipping tag(s) and seal(s) or locking device(s), department personnel must collect:

(a). all completed buyer/dealer records for skins in each shipment;

(b). stub portion of yellow shipping tag completely filled-out;

(c). severance tax and alligator hide tag fees owed by alligator hunter, alligator farmer or fur dealer for partial alligator skin pieces being shipped as referenced in Clause A.11.e.iv.

vi. If any of the above requirements are not satisfied, the shipment will not be authorized. Violation of this Clause is a Class Three violation as described in R.S. Title 56.

f. Fur dealers engaged in the business of buying and selling alligator hides must maintain complete records of alligator hides purchased inside and outside the state as described in R.S. Title 56. Fur dealers in the business of tanning alligator hides must provide a monthly report, on forms provided by or approved by the department, of all alligator hides being held in inventory. Failure to maintain complete records and to pay the required severance tax and alligator hide tag fees subjects any dealer to the full penalties provided and the immediate revocation of his license by the department. No license shall be issued to a dealer who has not paid the tax and alligator hide tag fees for the preceding year. Violation of this Subparagraph is a Class Three violation as described in R.S. Title 56.

g. Each fur buyer or fur dealer in possession of one or more tagged alligator skins deemed to be of no value, must notify the department of the tag number and total length of each wild alligator skin or belly width of each farm alligator skin and must arrange for delivery of the alligator skin(s) to the department. Department personnel will remove the CITES alligator tags and dispose of the alligator skins. Violation of this Subparagraph is a Class Two violation as described in R.S. Title 56.

h. Each fur buyer or fur dealer in possession of one or more tagged alligators deemed to be of no value, must notify the department of the tag number and total length of each wild alligator or belly width of each farm alligator prior to disposal of the alligator. Fur buyers or fur dealers must remove the CITES alligator tag(s) at the time of disposal and immediately return the tag(s) to the department. Violation of this Subparagraph is a Class Two violation as described in R.S. Title 56.

i. Alligator parts dealers acquiring alligator parts, shall complete an official alligator parts purchase form at the time of each purchase. Alligator parts dealers selling alligator parts, shall complete an official alligator parts sale form at the time of each sale. These forms shall be furnished by or approved by the department and shall be submitted to the department annually, no later than June 30; and

i. alligator parts dealers shall furnish a bill of sale to anyone purchasing alligator parts;

ii. the records of transactions involving alligator parts shall be available for inspection by the department and shall be maintained complete for a period of one year following any transaction;

iii. violation of this Subparagraph is a Class Two violation as described in R.S. Title 56.

j. Any alligator parts retailer purchasing finished alligator parts shall maintain a bill of sale for each purchase for a period of six months after such purchase and these records shall be available for inspection by the department. Violation of this Subparagraph is a Class Two violation as described in R.S. Title 56.

#### 12. Alligator Meat

a. Alligator meat from lawfully taken alligators can only be sold according to state and federal laws, Louisiana Department of Health and Hospitals regulations and Louisiana Wildlife and Fisheries Commission regulations. Violation of this Subparagraph is a Class Three violation as described in R.S. Title 56.

b. Alligator meat processed in the state of Louisiana and sold for human consumption must be processed in a licensed facility approved by the Louisiana Department of Health and Hospitals and the facility must display a valid permit issued by that agency. Violation of this Subparagraph is a Class Two violation as described in R.S. Title 56.

c. All processed alligator meat for sale must be packaged in suitable containers which identifies the contents as alligator meat, marked with a valid department license number and comply with all state and federal packaging and labeling requirements. Violation of this Subparagraph is a Class Two violation as described in R.S. Title 56.

d. All alligator meat shipped into the state and being offered for sale must meet all of Louisiana's health, processing, packaging and labeling requirements. Violation of this Subparagraph is a Class Two violation as described in R.S. Title 56.

#### 13. Disposal of Alligators by the Department

a. The department may sell alligators, alligator eggs or parts of alligators taken for any purpose deemed necessary for proper management of the species pursuant to R.S. Title 56.

b. The department may dispose of alligators, alligator eggs, or parts of alligators by donation or lending to a scientific institution or other institutions that the department deems have need for such alligators, however these institutions cannot sell or barter these animals which must be returned to the department at the conclusion of the program or need.

c. Confiscated alligator hides and parts may be destroyed by the department pending the outcome of the criminal trial.

d. Confiscated alligator eggs or live alligators may be sold or may be cared for by the department and released in suitable alligator habitat when and where they can survive when appropriate. All costs incurred by the department in the maintenance of these eggs and animals in captivity shall be the responsibility of the offender and restitution shall be made to the department. The department may consign confiscated alligators to a licensed farm for raising purposes and may compensate the farmer for his expenses by

transferring ownership to him of a percentage of the confiscated alligators; not to exceed 50 percent.

#### 14. Alligator Egg Collection

a. Alligator egg collection permits are a three party permit between the department, the permittee and a landowner/manager who owns or leases alligator nesting habitat determined by department biologists to be capable of producing alligator eggs. The numbers of eggs to be collected will be based upon biological management criteria and will be determined annually by technical staff of the department. The department only estimates the numbers of eggs available and assumes no responsibility or offers no guarantee that those numbers of eggs will be available. Alligator egg collection permits may be obtained upon application to the department on forms provided by the department. The annual deadline for submitting applications for alligator egg collection permits is June 1. This program is experimental and may be changed at any time based on biological data to insure for proper management of the wild alligator population.

b. Alligator egg collection permits may be issued by the department provided:

i. permittee is a properly licensed alligator farmer and meets all applicable requirements in Paragraph A.15 of this Section (alligator farm facility requirements);

ii. all land documentation required on the alligator egg collection permit has been presented to the department;

iii. department biologists determine the properties described on the permit application are indeed alligator nesting habitat and can sustain alligator egg collections;

iv. applicant has obtained all legal and necessary signatures from landowners/land managers.

c. It is unlawful for an alligator farmer or a permitted designated collection agent to collect eggs from properties other than those described in the alligator egg collection permit. Violation of this Subparagraph is a Class Four violation as described in R.S. Title 56.

d. An alligator farmer or designated collection agent in the act of collecting or possessing alligator eggs must possess on his or her person a copy of the fully executed alligator egg collection permit. The designated collection agent must also possess a valid designated collection agent permit. Violation of this Subparagraph is a Class Three violation as described in R.S. Title 56.

e. Collection of wild alligator eggs can only be made after contacting the appropriate regional supervisor of the Enforcement Division no less than 24 hours prior to each collection trip. Violation of this Subparagraph is a Class Three violation as described in R.S. Title 56.

f. Alligator eggs can only be collected from the wild from official sunrise to official sunset and only during the established alligator egg collection season and shall not exceed the number on his alligator egg collection permit. Violation of this Subparagraph is a Class Four violation as described in R.S. Title 56.

g. Alligator eggs collected from the wild must be collected and transported in a manner which insures the greatest survival of viable eggs as determined by department biologists. Violation of this Subparagraph is a Class Three violation as described in R.S. Title 56.

h. Failure to hatch at least 70 percent of viable alligator eggs collected from the wild shall be considered a

waste of Louisiana's natural resources. All alligator egg collection permits shall be revoked and no new permits issued should an alligator farmer be found to waste the resources of this state for two consecutive years.

i. Alligator egg collection permits shall be revoked and no new permits issued to alligator farmers who fail to average a minimum hatchling survival rate of 85 percent for two consecutive years.

j. The alligator egg collection permittee and the landowner are responsible for the return of the percentage of live alligators to the wild described on the alligator egg collection permit. This requirement is nontransferable. Minimum return rates will be based upon the state average hatching success which is 78 percent. In no case shall the return rate be less than 12 percent at 48 inches total length. Each alligator shall be returned to the original egg collection area within a maximum time of two years from date of hatching. Each alligator shall be a minimum of 36 inches and a maximum of 60 inches (no alligator over 60 inches total length will be accepted for release) in total length and the returned sex ratio should contain at least 50 percent females. The alligator egg collection permittee/landowner are responsible for and must compensate in kind for alligator mortality which occurs for department-authorized return to the wild alligators while being processed, stored, or transported. The department shall be responsible for supervising the required return of these alligators. A department transfer authorization permit is not required for return to the wild alligators which are delivered to the farm of origin no more than 48 hours prior to being processed for wild release. Releases back to the wild will only occur between March 15 and August 25 of each calendar year provided that environmental conditions as determined by the department are favorable for survival of the released alligators. Any farmer who owes 1000 or more alligators at 48 inches must release at least 1/4 of the total owed for that year by April 30; at least another quarter by June 15, at least another quarter by July 31; and the remainder by August 25. A farmer may do more than the required one-fourth of his releases earlier if available unscheduled days allow. Should an alligator egg collection permittee be unable to release the required number of alligators to the wild from his own stock, he shall be required to purchase additional alligators from another farmer to meet compliance with the alligator egg collection permit and these regulations, as supervised by the department. Department-sanctioned participants in ongoing studies involving survivability and return rates are exempt from these requirements during the period of the study. Violation of this Subparagraph is a Class Four violation as described in R.S. Title 56.

k. The percentage of alligators to be returned to the wild shall be selected from the healthiest of all alligators of that year class. Abnormal or deformed alligators are not acceptable for release into the wild. It is unlawful for alligators that are to be returned to the wild to be transported out of state. Violation of this Subparagraph is a Class Four violation as described in R.S. Title 56.

#### 15. Alligator Farm Facility Requirements

a. All first time applicants for a nongame quadruped breeder's or exhibitor's license who will house alligators on their premises shall show compliance of the following minimum facilities as applicable to their particular

operation during a required facility examination by department personnel prior to license issuance:

i. secured premises with adequate barriers to prevent escape of enclosed alligators and entry by alligators from outside the farm and to deter theft of alligators;

ii. source of clean, fresh water which shall be adequate to ensure for proper care of all alligator stock and facilities. This requirement shall be determined by department personnel;

iii. provisions for both dry area and pooled water within the secured area adequate for the numbers of alligators to be housed on the premises. This requirement will be determined by department personnel;

iv. provision for winter protection, either through adequate denning space or an enclosed, controlled-temperature environment of a design acceptable to the department;

v. all controlled-temperature alligator sheds (environmental chambers) shall be of a design acceptable to the department. Each shed shall maintain a minimum water and air temperature of 80° Fahrenheit. Minimum space requirements for alligators housed in the shed shall be:

(a). one square foot of space shall be required for each alligator less than 24 inches in length;

(b). three square feet of space shall be required for each alligator measuring 25 inches to 48 inches in length;

(c). one additional square foot of space shall be required for each additional 6 inches of alligator length for alligators above four feet in length;

vi. all alligator egg incubators shall be of a design acceptable to the department. Each incubator shall maintain a water and air temperature of 85° to 91° Fahrenheit during the egg incubation;

vii. applicant must be in compliance with all laws and regulations pertaining to zoning, construction, health and environmental standards and must possess any and all applicable permits and licenses;

viii. all alligator facilities should be constructed in a suitable location so as to minimize contact with people.

b. Following initial issuance of applicable license, all applicable facility requirements shall be adhered to and department personnel have the authority to inspect any and all of the facilities at any time. Failure to adhere to the requirements shall be a violation of these rules and violators will be given 60 days to correct the problem. Failure to comply shall result in confiscation of all animals and/or closure of all facilities. Violation of this Subparagraph is a Class Three violation as described in R.S. Title 56.

c. All alligator farmers possessing alligator eggs outside an alligator nest should house these eggs in an incubator providing constant temperature and humidity conditions. All incubators used to incubate alligator eggs shall be of a design to allow for maximum temperature control and conform to department requirements to allow for the maximum hatching success. Violation of this Subparagraph is a Class Three violation as described in R.S. Title 56.

d. All alligator farmers possessing alligator hatchlings shall house hatchlings in controlled environmental chambers which maintain a minimum temperature of 80° Fahrenheit year-round and containing dry and wet areas of sufficient surface area to permit all

alligators to partially submerge in water. All alligators 48" or less in length shall be housed in environmental chambers unless a special permit is issued by the department to move them to outside growth areas. Violation of this Subparagraph is a Class Three violation as described in R.S. Title 56.

e. Alligator farmers shall house alligators of different lengths into at least three groups, providing separation for all alligators less than two feet in length, two to four feet in length, and over four feet in length. Land and water areas sufficient for partial submersion or exit from water shall be provided for each group of alligators held. Violation of this Subparagraph is a Class Three violation as described in R.S. Title 56.

f. All facilities, alligator stock, and records are subject to examination by department personnel prior to permitting and thereafter during farm operation. Violation of this Subparagraph is a Class Three violation as described in R.S. Title 56.

g. It shall be unlawful for alligator eggs or alligators to be moved from a licensed premises without permitting/approval of the department. Violation of this Subparagraph is a Class Three violation as described in R.S. Title 56.

h. Any alligator egg or alligator raised on an alligator farm shall be cared for under conditions that do not threaten the survival of such egg and alligator as determined by the biological staff of the Coastal and Nongame Resources Division. In making such determination, Coastal and Nongame Resources Division biologists shall take into consideration sanitary conditions, temperature control, feeding, overcrowding and other conditions which effect the survival of alligator eggs and alligators. If the biological staff of the Coastal and Nongame Resources Division determines that the survival of any alligator egg or alligator is threatened due to the conditions on an alligator farm, the department shall notify the alligator farmer and shall provide the farmer with 60 days to take corrective action. If the farmer fails to take corrective action within 60 days, the department shall have the authority to confiscate any alligator egg or alligator which remains under conditions that threaten the survival of such alligator egg or alligator and to dispose of such alligator egg or alligator as the department deems necessary. Violation of this Subparagraph is a Class Four violation as described in R.S. Title 56.

#### 16. Exceptions

a. The department or an authorized representative of the department may take by any means and possess alligators, alligator eggs, or parts of alligators while in the performance of official duties.

b. These regulations shall not prohibit a person from killing an alligator in immediate defense of his or her life or the lives of others. Alligators killed under this provision must be reported to the department within 24 hours.

#### 17. Penalty for Violation

a. In order to facilitate greater control over alligator trafficking, the Louisiana Department of Wildlife and Fisheries finds that public welfare imperatively requires emergency action when the provisions of these regulations are violated.

b. In addition to all penalties set forth herein, violators may be subject to criminal prosecution under

provisions of the Louisiana Revised Statutes, particularly Titles 14 and 56 and under Federal law.

c. In addition to all other penalties provided by these rules and by statute, violation of any part of these regulations may result in the suspension and/or revocation of any or all alligator licenses/permits held by the violator and, as further penalty, for serious, repeat, or multiple violations, the department shall have the right to deny a violator any and all licenses/permits relating to alligators for a period not to exceed three years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115, R.S. 56:259, R.S. 56:262, R.S. 56:263 and R.S. 56:280.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 16:1070 (December 1990), amended LR 17:892 (September 1991), LR 19:215 (February 1993), LR 20:321 (March 1994), LR 26:1492 (July 2000), LR 28:1996 (September 2002), LR 30:2338 (October 2004), LR 30:2878 (December 2004), LR 31:2267 (September 2005), LR 33:677 (April 2007), LR 33:677 (April 2007), LR 35:690 (April 2009), LR 37:2421 (August 2011).

Robert J. Barham  
Secretary

1108#020

## RULE

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

#### Civil Fish and Wildlife Values—Threatened and Endangered Species (LAC 76:I.Chapter 3)

The Wildlife and Fisheries Commission does hereby amend the civil fish and wildlife values, guidelines for determining fish and wildlife values and the list of threatened and endangered species. It also establishes conversion factors to be used to convert the weight of fish and shellfish species not in whole form to whole form weight for the purpose of assigning civil restitution penalty values for commercial fish and shellfish species. Authority to establish such rules and regulations is vested in the Wildlife and Fisheries Commission by R.S. 56:40.1-40.9 and R.S. 56:1904.

#### Title 76

#### WILDLIFE AND FISHERIES

#### Part I. Wildlife and Fisheries Commission and Agencies Thereunder

#### Chapter 3. Special Powers and Duties

#### Subchapter D. Wildlife Values

#### §313. Guidelines for Determining Fish and Wildlife Values

A. The following are the guidelines utilized by the Department of Wildlife and Fisheries in determining fish and wildlife values.

1. With respect to fish and shellfish species, the American Fisheries Society publishes hatchery values reflecting estimated costs involved in rearing various freshwater and saltwater fish. These figures, adjusted by the Consumer Price Index; current data relating to expenditures of both sport and commercial fishermen relating to the animal or species which, directly or indirectly, result in revenues being generated for the state; ex-vessel commercial

prices, as reported by the National Marine Fisheries Service and the Department of Wildlife and Fisheries Trip Ticket Program; estimated costs involved in the capture, purchase, transportation and release of species of fish; the current commercial retail selling price of living replacement animals; and, the current commercial selling price of meat and/or other products which are derived from the animal and traded in commerce, shall be considered by the department in formulating its recommendations concerning valuation.

2. With respect to avian species, existing information and estimated costs involved in the capture, purchase, transportation and release of species of birds; cost to purchase replacement animals from other states or jurisdictions; the costs to zoos and other zoological institutions to raise and maintain like animals; the current commercial retail selling price of meat and/or other products which are derived from the animal and traded in commerce; and, the expenditures of sportsmen and others relating to the animal or species which, directly or indirectly, result in revenue being generated for the state, shall be considered by the department in formulating its recommendations concerning valuation.

3. With respect to mammal species, estimated costs involved in the capture, purchase, transportation, and release of species of mammals; pelt values; costs to zoos and other zoological institutions to raise and maintain like animals; the current commercial retail selling price of meat and/or other products which are derived from the animal and traded in commerce; and the expenditures of sportsmen and others relating to the animal of species which, directly or indirectly, result in revenue being generated for the state, shall be considered by the department in formulating its recommendations concerning valuation.

4. With respect to reptiles and amphibian species, the estimated costs involved in the capture, purchase, transportation and release of species of reptiles and amphibians; pelt or hide values, costs to zoos and other zoological institutions to raise and maintain the animal; the current commercial retail selling price of meat and/or other products which are derived from the animal and traded in commerce; and the expenditures of hunters, trappers, and recreational sportsmen with respect to the animal or species which, directly or indirectly, result in revenues being generated for the state shall be considered by the department in formulating its recommendations concerning valuation.

5. Certain species are highly prized because of their rarity or may have a high intangible perceived value placed on the animal or species by the public. Other species have an intrinsically high value because they are threatened or endangered. In addition to the guidelines set forth above, the department shall, with respect to these rare and/or threatened and/or endangered species which might have limited commercial value but which possess a high intangible, intrinsic, aesthetic, ecological, or biological value, consider those factors when determining its recommendations with respect to valuation.

6. Not all the criteria set forth in the guidelines above will be applicable to each particular series and each criterion or factor shall be considered by the department only insofar as it is applicable to each particular species.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:40.1-40.9.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 15:200 (March 1989), amended LR 37:2434 (August 2011).

**§315. Fish and Wildlife Values**

A. All fish and wildlife species found within, or taken from the state have value, regardless of whether a specific value is provided herein. If a specific value is not provided for in this Section, that species is not deemed to be without value and its value may be determined.

B. Fish and Wildlife Values

1. Game Mammals and Game Birds

Deer, Quality <sup>1</sup>	\$2,033.29
Deer, Non-Quality	\$1,624.61
Squirrels	\$ 20.32
Rabbits	\$ 31.71
Turkeys	\$1,539.37
Ducks	\$ 26.61
Geese	\$ 51.58
Coots	\$ 14.63
Gallinules and Rails	\$ 22.02
Snipe	\$ 19.94
Quail	\$ 43.01
Woodcock	\$ 59.81
Doves	\$ 14.27

<sup>1</sup> Quality deer defined as buck with at least eight total points, minimum spread of 13.5 inches and minimum beam length of 16.5 inches using the Boone and Crockett Scoring system defined in Measuring and Scoring North American Big Game Trophies; Third Edition, by Nesbitt, William H. and Wright, Philip L., updated by Buckner, Eldon L., Byers, C. Randall, and Reneau, Jack, 2009.

2. Non-Game Animals

Raptors (Birds)	\$ 87.03
Other Birds	\$ 17.41
Frogs	\$ 6.12/lb.
Turtles	\$ 3.87/lb.
Snakes, Other	\$ 9.00
Pine Snakes	\$ 150.00
Salamanders	\$ 5.00
Alligator (Eggs)	\$ 13.00/egg
Alligator, Other Than Albino (Whole, Skin, or Meat <sup>2</sup> )	\$ 375.80
Mink	\$ 6.87
Fox	\$ 18.15
Muskrat	\$ 2.95
Raccoon	\$ 27.75
Otter	\$ 23.77
Bobcat	\$ 27.04
Marine Mammals	\$3,481.19
Other Mammals, Excluding Outlawed Quadrupeds	\$ 17.41

<sup>2</sup> For alligator meat, 23 pounds of deboned meat and 35 pounds of bone in carcass meat shall equate to one alligator. Civil restitution penalty amounts for illegal possession of alligator meat, absent the presence of other parts of the animal(s), shall be based on the weight of the meat, with the weight rounded up to the next number of whole alligators.

3. Federally Listed Threatened and Endangered Species<sup>3</sup>

Reptiles (Adult or Young)	\$4,351.49/animal
Reptiles (Eggs)	\$4,351.49/violation
Birds (Adult or Young)	\$4,351.49/animal
Birds (Eggs)	\$4,351.49/violation

Mammals	\$4,351.49/animal
Invertebrates	\$4,351.49/violation
Fish	\$4,351.49/animal
Amphibians	\$4,351.49/animal

<sup>3</sup> See LAC 76:1.317 for a list of Threatened or Endangered Species.

4. Species of Special Concern

Fish	
Prohibited fish species as found in LAC 76:VII.145, LAC 76:VII.337.A, and LAC 76:VII.357.B.4 excluding species listed in LAC 76:1.317.	\$2,175.75/animal
Birds	
Bald Eagle	\$4,351.49/animal
Brown Pelican	\$4,351.49/animal
Peregrine Falcon	\$4,351.49/animal
Mammals	
Black Bear	\$10,000.00/animal
Cougars (Felis concolor cougar)	\$4,351.49/animal
Reptiles	
Albino Alligator	\$4,351.49/animal

5. All Fish Not Listed Elsewhere in This Rule

Marine Fish	\$1.14/lb.
Freshwater Fish	\$0.62/lb.

6. Recreational and Commercial Fishes

Species Group	Value per Individual Fish
Drum, Red	\$26.47
Spotted Seatrout	\$28.97
Snapper, Red	\$28.69
White Trout <sup>4</sup>	\$3.89
Flounder	\$16.08
Croaker	\$4.61
Bass, Largemouth	\$13.43
Bluegill	\$0.91
Crappies	\$5.37
Paddlefish <sup>5</sup>	\$341.72

<sup>4</sup> Sand Seatrout and Silver Seatrout<sup>5</sup> For Paddlefish roe, 4.75 pounds of roe shall equate to one Paddlefish. Civil restitution penalty amounts for illegal possession of Paddlefish roe, absent the presence of other parts of the animal(s), shall be based on the weight of the roe, with the weight rounded up to the next number of whole Paddlefish.

7. Commercial Fish Species

Species Group	Value/Lb <sup>6</sup>
Amberjacks	\$2.35
Other Jacks	\$1.34
Barracuda	\$1.54
Bonito, Atlantic	\$0.69
Bowfin <sup>7</sup>	\$2.01
Buffalo	\$0.58
Butterfish	\$0.40
Carp	\$0.25
Catfish, Channel	\$1.16
Catfish, Sea	\$0.61
Catfish, Freshwater	\$0.97
Cobia	\$4.29
Crab, Blue	\$1.53
Crab, Stone	\$5.74
Crawfish, Wild	\$1.38
Dolphin (Fish)	\$1.83

Species Group	Value/Lb <sup>6</sup>
Driftfish	\$2.75
Drum, Black	\$1.54
Drum, Freshwater	\$0.32
Eel, Freshwater	\$2.09
Gar	\$1.74
Grouper, Gag	\$5.32
Grouper, Yellowedge	\$6.38
Grouper, Other, Hinds and Grunts	\$4.38
Kingfish and Whiting	\$0.85
Mackerel, King	\$2.97
Mackerel, Spanish	\$1.42
Menhaden	\$0.11
Mullet <sup>8</sup>	\$1.00
Oilfish and Escolar	\$1.47
Oyster (in-shell weight)	\$0.45
Pompano	\$6.35
Porgy	\$1.94
Shad	\$0.40
Shark, Shortfin Mako	\$1.52
Sharks, Other and Rays	\$0.62
Sheepshead	\$0.62
Shrimp	\$2.57
Snapper, Other	\$3.97
Squid	\$0.72
Swordfish	\$3.82
Tilefishes	\$3.06
Triggerfish	\$2.13
Tripletail	\$1.85
Tuna, Albacore	\$1.31
Tuna, Bigeye	\$5.76
Tuna, Blackfin	\$0.64
Tuna, Bluefin	\$8.80
Tuna, Other	\$0.78
Tuna, Yellowfin	\$6.84
Wahoo	\$1.78

<sup>6</sup> All values listed are for whole form weight. When fish are not in whole form, the conversion factors set out in Section 316, following, shall be applied to convert their product form weight to whole form weight. If product form weight to whole form weight conversion factor is not available for a particular species and is thus not listed in Section 316, any data that is collected in a scientific method to allow estimation of the conversion factor from product form weight to whole form weight for that species shall be allowed to be used to determine civil restitution value for product form.<sup>7</sup> For bowfin roe, weight of the roe should be multiplied by 1/.12 to convert the roe to whole bowfin weight.<sup>8</sup> For mullet roe, weight of the roe should be multiplied by 1/.18 to convert the roe to whole mullet weight.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:40.2.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 16:39 (January 1990), amended LR 18:290 (March 1992), LR 37:2435 (August 2011).

**§316. Fish and Shellfish Product Form Conversions**

A. With respect to fish and shellfish species, the Department of Wildlife and Fisheries Trip Ticket Program uses conversion factors to convert the weight of different product forms of species to their whole form weight. Those conversion factors, as enumerated below, shall be used to convert the weight of fish and shellfish species not in whole form to whole form weight for the purpose of assigning civil restitution penalty values for commercial fish and shellfish species.

B. Fish and Shellfish Product Form Conversion Factors

Fish and Shellfish Product Form Conversion Factors			
Fish and Shellfish	Gutted	Gutted and Headed, or Steaked, or Cleaned, or Tubed	Meat (Fillet, Pieces, or Chunks)
Amberjack, Greater	1.04	1.24	3.14
Amberjack, Lesser	1.04	1.24	3.14
Angelfish	1.11	1.33	2.86
Barracuda	1.11	1.33	2.86
Bigeye, Other	1.04	1.24	1.79
Bigeye, Short	1.04	1.24	1.79
Bluefish	1.09	1.43	
Bonito, Atlantic	1.15	1.52	3.03
Bowfin	1.14	1.45	2.33
Brotula, Bearded	1.12	1.39	3.70
Buffalofish	1.11	1.54	3.12
Bulleye	1.04	1.24	1.79
Bullheads	1.14	1.45	2.86
Carp, Bighead	1.04	1.72	3.57
Carp, Common	1.11	1.54	3.12
Carp, Grass	1.04	1.72	3.57
Carp, Silver	1.04	1.72	3.57
Catfish, Blue	1.14	1.45	2.86
Catfish, Channel	1.14	1.45	2.86
Catfish, Flathead	1.14	1.45	2.86
Catfish, Gafftopsail	1.12	1.39	3.70
Catfish, Hardhead	1.12	1.39	3.70
Chubs	1.04	1.24	1.79
Cobia	1.04	1.24	
Crab, Blue		1.25	6.00
Crawfish			6.67
Creole Fish	1.04	1.24	1.79
Dogfish, Other	1.20	1.39	3.33
Dogfish, Spiny	1.20	1.39	3.33
Dolphin	1.20	1.39	3.33
Driftfish, Black	1.11	1.54	2.86
Drum, Black	1.14	1.64	2.86
Eel, Freshwater	1.01	1.04	
Eel, Conger	1.11	1.25	2.22
Eel, Moray	1.11	1.25	2.22
Escolar	1.15	1.52	2.86
Gar, Alligator	1.04	1.33	2.86
Gar, Longnose	1.04	1.33	2.86
Gar, Shortnose	1.04	1.33	2.86
Gar, Spotted	1.04	1.33	2.86
Garfish, Other	1.04	1.33	2.86



Fish and Shellfish Product Form Conversion Factors			
Fish and Shellfish	Gutted	Gutted and Headed, or Steaked, or Cleaned, or Tubed	Meat (Fillet, Pieces, or Chunks)
Gaspergou	1.17	1.79	2.56
Graysby	1.18	1.43	2.63
Grouper, Black	1.18	1.43	2.63
Grouper, Gag	1.18	1.43	2.63
Grouper, Marbled	1.18	1.43	2.63
Grouper, Misty	1.18	1.43	2.63
Grouper, Nassau	1.18	1.43	2.63
Grouper, Red	1.18	1.43	2.63
Grouper, Snowy	1.18	1.43	2.63
Grouper, Warsaw	1.18	1.43	2.63
Grouper, Yellowedge	1.18	1.43	2.63
Grouper, Yellowfin	1.18	1.43	2.63
Grouper, Yellowmouth	1.18	1.43	2.63
Grunts	1.18	1.43	2.63
Hake	1.12	1.39	3.70
Hind, Red	1.18	1.43	2.63
Hind, Rock	1.18	1.43	2.63
Hind, Speckled	1.18	1.43	2.63
Jack, Almaco	1.04	1.24	1.79
Jack, Bar	1.04	1.24	1.79
Jack, Black	1.04	1.24	1.79
Jack, Cravelle	1.04	1.24	1.79
Jack, Horse-Eye	1.04	1.24	1.79
Mackerel, King	1.04	1.33	2.86
Mackerel, Spanish	1.15	1.52	3.03
Mooneye	1.04		
Moonfish	1.04		
Mullet, Striped	1.14	1.45	2.86
Oilfish	1.11	1.54	2.86
Opah	1.04	1.24	1.79
Other Freshwater Finfish Species	1.14	1.33	3.03
Other Saltwater Finfish Species	1.14	1.33	3.03
Oyster			16.23
Parrotfish	1.04	1.24	1.79
Pinfish	1.11	1.54	
Pomfrets	1.04	1.24	1.79
Pompano, African	1.04	1.20	2.63
Pompano, Florida	1.04	1.20	2.63
Porgy, Jolthead	1.04	1.24	
Porgy, Knobbed	1.04	1.24	
Porgy, Red	1.04	1.24	
Porgy, Whitebone	1.04	1.24	

Fish and Shellfish Product Form Conversion Factors			
Fish and Shellfish	Gutted	Gutted and Headed, or Steaked, or Cleaned, or Tubed	Meat (Fillet, Pieces, or Chunks)
Rainbow Runner	1.04	1.24	3.14
Rover, Crimson	1.04	1.24	1.79
Rudderfish	1.12		
Rudderfish, Banded	1.04	1.24	3.14
Runner, Blue	1.09	1.43	3.14
Scamp	1.18	1.43	2.63
Scorpionfish, Longsnout	1.04	1.24	1.79
Scorpionfish, Other	1.04	1.24	1.79
Scorpionfish, Spiny Cheek	1.04	1.24	1.79
Scorpionfish, Spotted	1.04	1.24	1.79
Sculpins	1.12	2.57	5.00
Seabass, Bank	1.04	1.24	1.79
Seabass, Black	1.04	1.24	1.79
Seabass, Longtail	1.04	1.24	1.79
Shark, Bignose	1.20	1.39	3.33
Shark, Blacknose	1.20	1.39	3.33
Shark, Blacktip	1.20	1.39	3.33
Shark, Blue	1.20	1.39	3.33
Shark, Bull	1.20	1.39	3.33
Shark, Dusky	1.20	1.39	3.33
Shark, Finetooth	1.20	1.39	3.33
Shark, Hammerhead	1.20	1.39	3.33
Shark, Lemon	1.20	1.39	3.33
Shark, Longfin Mako	1.20	1.39	3.33
Shark, Night	1.20	1.39	3.33
Shark, Porbeagle	1.20	1.39	3.33
Shark, Sand Tiger	1.20	1.39	3.33
Shark, Sandbar	1.20	1.39	3.33
Shark, Shortfin Mako	1.20	1.39	3.33
Shark, Silky	1.20	1.39	3.33
Shark, Spinner	1.20	1.39	3.33
Shark, Tiger	1.20	1.39	3.33
Shark, White	1.20	1.39	3.33
Sharks, Other	1.20	1.39	3.33
Sharks, Other Large Coastal	1.20	1.39	3.33
Sharks, Other Small Coastal	1.20	1.39	3.33
Sharks, Thresher	1.20	1.39	3.33
Sheepshead	1.17	1.54	4.00
Shrimp, Brown		1.61	1.61
Shrimp, Pink		1.60	1.60
Shrimp, River		1.67	1.67

Fish and Shellfish Product Form Conversion Factors			
Fish and Shellfish	Gutted	Gutted and Headed, or Steaked, or Cleaned, or Tubed	Meat (Fillet, Pieces, or Chunks)
Shrimp, Rock		1.67	1.67
Shrimp, Royal Red		1.80	1.80
Shrimp, Seabob		1.53	1.53
Shrimp, Trachypenaeus		1.61	1.61
Shrimp, White		1.54	1.54
Snapper, Black	1.11	1.54	3.12
Snapper, Blackfin	1.11	1.54	3.12
Snapper, Cubera	1.11	1.54	3.12
Snapper, Dog	1.11	1.54	3.12
Snapper, Gray	1.11	1.54	3.12
Snapper, Lane	1.11	1.54	3.12
Snapper, Mahogany	1.11	1.54	3.12
Snapper, Mutton	1.11	1.54	3.12
Snapper, Queen	1.11	1.54	3.12
Snapper, Silk	1.11	1.54	3.12
Snapper, Vermilion	1.11	1.54	3.12
Snapper, Yellowtail	1.11	1.54	3.12
Soapfish	1.18	1.43	2.63
Spadefish	1.11	1.54	
Spanish Flag	1.04	1.24	1.79
Spot	1.04	1.72	3.57
Squirrelfish	1.14	1.24	1.79
Stingrays, Other	1.12		
Sunfishes, Ocean	1.04	1.72	3.57
Swordfish	1.20	1.33	3.33
Tilefish, Blackline	1.12	1.39	2.94
Tilefish, Blueline	1.12	1.39	2.94
Tilefish, Goldface	1.12	1.39	2.94
Tilefish, Other	1.12	1.39	2.94
Tilefish, Sand	1.12	1.39	2.94
Triggerfish, Gray	1.04	1.72	3.57
Triggerfish, Ocean	1.04	1.72	3.57
Triggerfish, Queen	1.04	1.72	3.57
Tripletail	1.18	1.43	
Tuna, Albacore	1.11	1.33	2.86
Tuna, Bigeye	1.25	1.25	3.03
Tuna, Blackfin	1.25	1.25	3.03
Tuna, Bluefin	1.18	1.25	3.03
Tuna, Little Tunny	1.18	1.25	3.03
Tuna, Skipjack	1.18	1.33	3.03
Tuna, Yellowfin	1.11	1.25	3.03

Fish and Shellfish Product Form Conversion Factors			
Fish and Shellfish	Gutted	Gutted and Headed, or Steaked, or Cleaned, or Tubed	Meat (Fillet, Pieces, or Chunks)
Wahoo	1.18	1.43	2.86
Wenchman	1.11	1.54	3.12
Whiting	1.14	1.45	2.86

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:40.2.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 37:2436 (August 2011).

**Subchapter E. Louisiana Natural Heritage §317. Threatened and Endangered Species**

A. The Secretary of the Department of Wildlife and Fisheries hereby determines that those species designated as endangered or threatened pursuant to the Federal Endangered Species Act (ESA) of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.), are designated as such by the U.S. Fish and Wildlife Service at 50 CFR 17.11. Based upon the above determination, said species, which are enumerated below, are deemed to be endangered or threatened species under the provisions of Louisiana Revised Statutes Title 56, Chapter 8, Part IV.

1. Birds (including eggs)		
Whooping Crane	Grus americana	E
Eskimo Curlew	Numenius borealis	E
Piping Plover	Charadrius melodus	T
Interior Least Tern	Sterna antillarum athalassos	E
Ivory-billed Woodpecker	Campephilus principalis	E
Red-cockaded Woodpecker	Picoides borealis	E
Bachman's Warbler	Vermivora bachmanii	E
2. Reptiles (including eggs)		
Green Sea Turtle	Chelonia mydas	T
Hawksbill Sea Turtle	Eretmochelys imbricata	E
Kemp's Ridley Sea Turtle	Lepidochelys kempii	E
Leatherback Sea Turtle	Dermochelys coriacea	E
Loggerhead Sea Turtle	Caretta caretta	T
Gopher Tortoise	Gopherus polyphemus	T
Ringed Sawback Turtle	Graptemys oculifera	T
3. Mammals		
Red Wolf	Canis rufus	E
West Indian Manatee	Trichechus manatus	E
Blue Whale	Balaenoptera musculus	E
Finback Whale	Balaenoptera physalus	E
Sei Whale	Balaenoptera borealis	E
Sperm Whale	Physeter catodon	E
Florida Panther	Felis concolor coryi	E
Louisiana Black Bear	Ursus americanus luteolus	T
4. Invertebrates		
Pink Mucket	Lampsilis abrupta	E
Fat Pocketbook	Potamilus capax	E
Louisiana Pearlshell	Margaritifera hembeli	T
American Burying Beetle	Nicrophorus americanus	E
Inflated Heelsplitter	Potamilus inflatus	T

5. Fish		
Pallid Sturgeon	Scaphirhynchus album	E
Gulf Sturgeon	Acipenser oxyrhynchus desotoi	T
6. Amphibians		
Dusky Gopher Frog	Rana sevosa	E
E = Endangered T = Threatened		

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:1904.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Office of Wildlife, LR 15:1099 (December 1989), amended LR 18:877 (August 1992), LR 37:2438 (August 2011).

Robert J. Barham  
Secretary

1108#019

## RULE

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

Texas Border Waters, Reciprocal  
Agreement and Black Bass Regulations  
(LAC 76:VII.110, 149, and 167)

The Wildlife and Fisheries Commission does hereby modify the recreational harvest regulations for freshwater game fish on the waters of the Louisiana-Texas border, specifically Toledo Bend Reservoir, Caddo Lake, and the Sabine River, in accordance with the reciprocal agreement between Texas and Louisiana.

#### Title 76

### WILDLIFE AND FISHERIES

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

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

#### §110. Texas Border Waters Recreational Creel, Size, and Possession Limits

##### A. Purpose

1. Pursuant to Louisiana Revised Statute 56:673 and the July 1, 2010 Memorandum of Understanding between Louisiana Department of Wildlife and Fisheries and Texas Parks and Wildlife, the commission hereby ratifies and enters into an agreement with the Texas Parks and Wildlife Department to establish uniform and reciprocal regulations for the recreational harvest of freshwater game fish on the waters of the Louisiana-Texas border, specifically Toledo Bend Reservoir, Caddo Lake, and the Sabine River. Those regulations are as follows.

##### B. Toledo Bend Reservoir

1. The recreational daily creel limit (daily take) for largemouth bass (*Micropterus salmoides*) and spotted bass (*Micropterus punctulatus*) is set at eight fish, in aggregate. The minimum total length limit for largemouth bass (*M. salmoides*) is 14 inches. There is no minimum length limit on spotted bass. For enforcement purposes, a spotted bass shall be defined as a black bass with a tooth patch on its tongue.

2. The daily creel limit for white bass (*Morone chrysops*) is 25 fish and there is no minimum length limit.

3. There is no limit on the daily take of Yellow Bass (*Morone mississippiensis*).

4. The recreational daily creel limit for black crappie (*Pomoxis nigromaculatus*) and white crappie (*Pomoxis annularis*) is set at 25 fish, in the aggregate, and there is no minimum length limit.

5. The recreational daily creel limit for channel catfish (*Ictalurus punctatus*) and blue catfish (*Ictalurus furcatus*) is set at 50 fish in the aggregate, there is no minimum length limit and not more than five fish may exceed 20 inches in total length.

6. The recreational daily creel limit for flathead catfish (*Pylodictis olivaris*) is set at 10 fish. The minimum length limit is 18 inches.

##### C. Caddo Lake

1. Harvest regulations for black basses (largemouth bass, *Micropterus salmoides* and spotted bass, *Micropterus punctulatus*) on Caddo Lake are as follows:

a. Largemouth bass size limits 14 inch-18 inch slot. A 14-18 inch slot limit means that it is illegal to keep or possess a largemouth bass whose maximum total length is between 14 inches and 18 inches, both measurements inclusive.

b. Spotted bass size limits—no minimum length limit. For enforcement purposes, a spotted bass shall be defined as a black bass with a tooth patch on its tongue.

c. The daily creel limit (daily take) for black bass (*Micropterus spp.*) is set at eight fish, in the aggregate, of which no more than four largemouth bass may exceed 18 inches maximum total length.

2. The daily creel limit for white bass (*Morone chrysops*) is 25 fish and there is no minimum length limit.

3. There is no daily creel limit on yellow bass (*Morone mississippiensis*), and there is no minimum length limit.

4. The recreational daily creel limit for black crappie (*Pomoxis nigromaculatus*) and white crappie (*Pomoxis annularis*) is set at 25 fish, in the aggregate, and there is no minimum length limit.

5. The recreational daily creel limit for channel catfish (*Ictalurus punctatus*) and blue catfish (*Ictalurus furcatus*) is set at 50 fish in the aggregate, there is no minimum length limit and not more than five fish may exceed 20 inches in total length.

6. The recreational daily creel limit for flathead catfish (*Pylodictis olivaris*) is set at ten fish. The minimum length limit is 18 inches.

##### D. Sabine River

1. For purposes of this Section the Sabine River shall be defined as river proper from the Toledo Bend Dam downstream to the Interstate 10 bridge and the river proper upstream from Toledo Bend Reservoir to the point at which the entire river enters Texas as marked by state line sign.

2. The recreational daily creel limit (daily take) for largemouth bass (*Micropterus salmoides*) and spotted bass (*Micropterus punctulatus*) is set at eight fish, in aggregate. The minimum length limit for largemouth bass (*M. salmoides*) is 14 inches. There is no minimum length limit on spotted bass. For enforcement purposes, a spotted bass shall be defined as a black bass with a tooth patch on its tongue.

3. The daily creel limit for striped bass (*Morone saxatilis*) is set at five fish. There is no minimum length limit and only two fish may be over 30 inches in total length.

4. The daily creel limit for white bass (*Morone chrysops*) is 25 fish and there is no minimum length limit.

5. There is no daily creel limit on yellow bass (*Morone mississippiensis*), and there is no minimum length limit.

6. The recreational daily creel limit for black crappie (*Pomoxis nigromaculatus*) and white crappie (*Pomoxis annularis*) is set at 25 fish, in the aggregate, and there is no minimum length limit.

7. The recreational daily creel limit for channel catfish (*Ictalurus punctatus*) and blue catfish (*Ictalurus furcatus*) is set at 50 fish in the aggregate, there is no minimum length limit and not more than five fish may exceed 20 inches in total length.

8. The recreational daily creel limit for flathead catfish (*Pylodictis olivaris*) is set at ten fish. The minimum length limit is 18 inches.

E. Daily Possession Limit—Toledo Bend Reservoir, Caddo Lake, and the Sabine River

1. The following possession limits apply to all persons while on the waters of Toledo Bend Reservoir, Caddo Lake, or the Sabine River. No person shall possess any species of fish in excess of a one day creel limit. No person shall at any time possess in excess of the daily creel limit of any species, except that a two day creel limit may be possessed on the land, if the fish were caught on more than one day and no daily creel limits were exceeded. No person shall possess any fillets of any fish species while on the water.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6 (25) (a), R.S. 56:325 (C), R.S. 56:326.3, R.S. 56:673.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 14:548 (August 1988), amended LR 17:278 (March 1991), LR 17:1123 (November 1991), LR 19:790 (June 1993), LR 23:999 (August 1997), LR 31:948 (April 2005), LR 37:2439 (August 2011).

#### **§149. Black Bass Regulations—Daily Take and Size Limits**

A. The Wildlife and Fisheries Commission establishes a statewide daily take (creel limit) of 10 fish for black bass (*Micropterus spp.*). The possession limit shall be the same as the daily take on water and twice the daily take off water.

B. In addition, the commission establishes special size and daily take regulations for black bass on the following water bodies:

1. - 4.b.i. ...

5. Louisiana-Texas Border Waters—Toledo Bend Reservoir, Caddo Lake, and Sabine River:

a. The size, daily take, and possession limits for black bass for water bodies located on the Louisiana-Texas border (Toledo Bend Reservoir, Caddo Lake and the Sabine River) are established in §110 of this Chapter.

\*Maximum total length—the distance in a straight line from the tip of the snout to the most posterior point of the depressed caudal fin as measured with mouth closed on a flat surface.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(25)(a), R.S. 56:325(C), R.S. 56:326.3, and R.S. 56:673.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 14:364 (June 1988), amended LR 17:278 (March 1991), repromulgated LR 17:488 (May 1991), amended LR 17:1122 (November 1991), LR 20:796 (July 1994), LR 23:1168 (September 1997), LR 24:505 (March 1998), LR 26:97 (January 2000), LR 28:104 (January 2002), LR 29:373 (March 2003), LR 30:2339 (October 2004), repromulgated LR 30:2495 (November 2004), amended LR 37:2440 (August 2011).

#### **§167. Black Bass Regulations, Caddo Lake**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 19:790 (June 1993), repealed LR 37:2440 (August 2011).

Robert J. Barham  
Secretary

1108#018

#### **RULE**

#### **Workforce Commission State Plumbing Board**

Continuing Professional Education Programs  
(LAC 46:LV.Chapter 10)

The Louisiana State Plumbing Board (board), pursuant to R.S. 37:1366(I), which authorizes the board to establish and determine by rule minimum requirements relative to continuing professional education (CPE) for the renewal or reinstatement of any license or special endorsement issued by the board, has amended plumbing regulations, LAC 46:LV.1001, 1003 and 1005, in accordance with the Administrative Procedure Act. The proposed Rule change allows the board to enter into cooperative endeavor agreements with statutory stakeholders; allows licensees to substitute industry recertification for CPE compliance requirements; and allows a CPE course provider to use non-licensed individuals to provide supervised instruction to CPE participants.

#### **Title 46**

#### **PROFESSIONAL AND OCCUPATIONAL STANDARDS**

#### **Part LV. Plumbers**

#### **Chapter 10. Continuing Professional Education Programs**

#### **§1001. Journeyman and Master Plumbers**

A. - B.19. ...

C. Course Form and Content

1. ...

2. CPE courses shall be presented in one of the following formats:

a. - c. ...

d. for master plumbers, two sessions totaling six classroom hours presented within a 30-day period.

3. - 8. ...

9. Each course provider shall, at its own expense and in a format approved by the Louisiana State Plumbing Board, mail, fax or electronically transmit to the Louisiana

State Plumbing Board certification of each licensee's completion of CPE requirements within ~~30~~ ten days of completion.

10. The board is authorized to enter into a cooperative endeavor agreement with either the Louisiana Association of Plumbing, Heating and Cooling Contractors of Louisiana or the Louisiana Pipe Trades Association, or any subsidiary or affiliate of either non-profit organization, to jointly provide CPE services to licensed journeyman and master plumbers. The board is authorized to share costs and expenses with either organization under terms and conditions that promote the public interest and avoid gratuitous donation of public funds.

C.11. - D.9. ...

E. Course Instructors

1. - 1.c. ...

2. An approved course instructor may use, under its live supervision, a non-licensed supplemental lecturer to present additional materials as required. Prior to approval, a course instructor must identify to the board,—any supplemental lecturer they intend to use, including a resume from the supplemental lecturer, and the subject matter the supplemental lecturer will discuss within 30 days prior to the course being conducted.

3. - 6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1366(I).

HISTORICAL NOTE: Promulgated by the Department of Labor, State Plumbing Board, LR 30:2068 (September 2004), amended LR 37:2440 (August 2011).

### **§1003. Water Supply Protection Specialists**

A. CPE Requirement

1. Effective January 1, 2011, in addition to the yearly renewal of their endorsement, every three years all persons holding a water supply protection specialist endorsement issued by the Louisiana State Plumbing Board are required to show proof of attendance at no less than four hours of a Louisiana State Plumbing Board-approved CPE training class in the prior three calendar years, as set out in this Section. In lieu of attendance at any such class, the board may accept proof of the endorsee's attendance or participation in board-approved industry-related recertification programs during any three year period.

B. - C.1. ...

2. CPE courses shall be presented in one of the following formats:

a. a minimum of four classroom hours presented on one day; or

b. not less than two sessions of two classroom hours each presented within a 30-day period.

C.3. - D.9. ...

E. Course Instructors

1. - 1.c. ...

2. An approved course instructor may use, under its live supervision, a non-licensed, supplemental lecturer to present additional material as required. Prior to approval, a course instructor must identify to the board, any supplemental lecturer they intend to use, including a resume from the supplemental lecturer, and the subject matter the supplemental lecturer will discuss within 30 days prior to the course being conducted.

3. - 6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1366(I).

HISTORICAL NOTE: Promulgated by the Department of Labor, State Plumbing Board, LR 30:2074 (September 2004), amended LR 37:905 (March 2011), LR 37:2441 (August 2011).

### **§1005. Medical Gas Piping Installers and Medical Gas Verifiers**

A. CPE Requirement

1. Effective January 1, 2012, in addition to the yearly renewal of their endorsement, all persons seeking to renew a medical gas piping installer or medical gas verifier license issued by the Louisiana State Plumbing Board are required to show proof of attendance at no less than four hours of a Louisiana State Plumbing Board-approved CPE class between each NFPA 99C code cycle or any code change of the NFPA 99C, as set out in this Section. In lieu of attendance at any such class, the board may accept proof of the endorsee's attendance or participation in board-approved industry-related recertification programs between each NFPA 99C code cycle or any code change of the NFPA 99C.

B. - D.9. ...

E. Course Instructors

1. - 1.c. ...

2. An approved course instructor may use under its live supervision, a non-licensed supplemental lecturer to present additional materials as required. Prior to approval, a course instructor must identify to the board, any supplemental lecturer they intend to use, including a resume from the supplemental lecturer, and the subject matter lecturer will discuss within thirty days prior to the course being conducted.

3. - 6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1366(I).

HISTORICAL NOTE: Promulgated by the Department of Labor, State Plumbing Board, LR 30:2074 (September 2004), amended LR 37:2441 (August 2011).

Louis Robein  
Board Attorney

1108#015

# Notices of Intent

## NOTICE OF INTENT

### Department of Civil Service Board of Ethics

#### Third Party Ethics Training (LAC 52:I.Chapter 24)

The Department of Civil Service, Board of Ethics, in accordance with R.S. 42:1134(A) and with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., has initiated rulemaking procedures to promulgate new regulations for Third Party Ethics Training, pursuant to HCR 91 of the 2011 Regular Legislative Session.

#### Title 52

#### ETHICS

#### Part I. Board of Ethics

#### Chapter 24. Third Party Ethics Training

##### §2401. In General

A. It is of primary importance to the public that each public servant in the state of Louisiana undergoes education and training on the Code of Governmental Ethics during each year of his term of public employment or term in office, as the case may be, in accordance with R.S. 42:1170. These rules establish the procedure to certify persons and programs to deliver education regarding the laws within the jurisdiction of the Board of Ethics (board) to public servants required to receive education regarding those laws. These rules do not apply to persons who are employed by the Ethics Administration Program.

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

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 37:

##### §2403. Definitions

A. The following definitions supplement those not found elsewhere in these rules or in the Code of Governmental Ethics.

*Additional Material*—public servant ethics training material which has not yet been approved by the Board of Ethics for presentations. Such material requires board approval prior to being presented to public servants.

*Certified Trainer*—any person who is approved to educate and train the state's public servants on the Code of Governmental Ethics and who is not an employee of the Board of Ethics.

*Liaison*—the person designated by each agency head to provide all public servants of that agency information and instruction relative to ethics and conflicts of interest.

*Preapproved Training Material*—public servant ethics training materials that do not require approval from the Board of Ethics in order for the certified trainer to present the material to public servants.

*Proctor*—a person who does not teach a public servant ethics training program, but administers the training by recorded presentation, which may include, but is not limited to, a DVD or electronic presentation requiring computer software provided by the Board of Ethics.

*Program*—a specific session of public servant ethics training.

*Public Servant Ethics Training*—the mandatory one hour of ethics training that all public servants in the State of Louisiana are required to attend annually pursuant to R.S. 42:1170(A).

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

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 37:

##### §2405. Certification of Trainers

A. In order for an applicant to be an approved certified trainer, he must meet the following requirements.

1. Required Training. Certified trainer applicants are required to undergo a minimum of four hours of training prior to submitting an application seeking certified trainer status. Courses that may count toward an applicant's four hour training requirement include:

a. a two hour training course developed for liaisons pursuant to R.S. 42:1170(C);

b. public servant ethics training offered by an employee of the Ethics Administration Program or any other trainer who has been previously certified to deliver public servant ethics training programs by the Ethics Administration Program; or

c. public servant ethics training offered via the Board of Ethics website; however, no more than one hour will count toward an applicant's four hour training requirement.

2. Application Submission. All persons who seek approval as a certified trainer to deliver public servant ethics training program must submit an *Application for Trainer Accreditation* following the completion of the required training pursuant to Subsection A of this Section. The application can be found on the board's website.

3. Ongoing Training. A certified trainer who wishes to maintain certified status in subsequent years is required to undergo a one hour continuing education training course within 90 days of the new calendar year; this requirement can be met through attendance at any of the courses enumerated in Subsection A of this Section. A certified trainer who does not undergo his one hour continuing education training course to maintain his certified status will be required to attend four hours of training and submit an *Application for Trainer Accreditation* to renew his certified trainer status.

B. Certified trainer applicants shall maintain a license to practice law in the state of Louisiana and must not ever have been found to have been in violation of any laws under the jurisdiction of the Board of Ethics or the Ethics Adjudicatory Board.

C. The ethics administrator, or his designee, retains the right to refuse approval of applicants who do not comply with the requirements of these rules.

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

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 37:

## **§2407. Training and Education Materials**

A. Certified trainers are required to use training and education materials approved by the Ethics Administration Program.

B. Access to preapproved training materials will be made available to trainers pending completion of training requirements set forth in §2403 and upon trainer certification.

C. Additional material may be used by certified trainers if the material has been approved by the ethics administrator, or his designee, pursuant to the standards and expectations set out in §2405.

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

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 37:

## **§2409. Standards and Expectations for Approval; Additional Material**

A. Application for Approval. Certified trainers who wish to utilize material that has not been preapproved by the board approved must submit an *Application for Approval of Material for Public Servant Ethics Training* to the Board of Ethics with a copy of the proposed program.

B. Process. The Ethics Administration Program will evaluate the application and material pursuant to the standards and expectations in Subsection C of this Section. An application for such program and materials must be submitted to the board at least 60 days in advance of the program.

C. Standards and Expectations. The following standards will govern the approval of materials by the board.

1. The materials for the program must have significant intellectual or practical content, and its primary objective must be to maintain or increase the public servant's awareness of the ethical standards set forth in the Code of Governmental Ethics.

2. Materials submitted with the application shall include a copy of thorough, high quality, readable, and carefully prepared written materials that shall be given to all public servants at the program, at no additional charge, at or before the time the course is presented, unless the absence of such materials is recognized as reasonable and approved by the board.

3. The ethics administrator, or his designee, may give approval for activities in which electronically recorded or reproduced material is used, but only if the material meets the standards and expectations for material that is not electronically recorded or reproduced.

D. Additional Material. Materials that have been approved by the Ethics Administration Program for use in a public servant ethics training program are valid for the remainder of the calendar year and are not required to undergo an approval process until the following 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 37:

## **§2411. Notification of Ethics Training Program**

A. Prior to conducting a public servant ethics training program, a certified trainer must notify the Ethics Administration Program and request approval of the session. An *Application for Public Servant Ethics Training Program* can be found on the board's website and shall be submitted

to the Ethics Administration Program electronically for approval.

B. Preapproved Training Material. A certified trainer must submit an *Application for Public Servant Ethics Training Program* to the Board of Ethics at least 45 days prior to the program if the material to be used in the presentation is preapproved training material.

C. Additional Material. A certified trainer must submit an *Application for Public Servant Ethics Training Program* in conjunction with an *Application for Approval of Material for Public Servant Ethics Training* pursuant to §2405 at least 60 days prior to the program if the material to be used in the presentation is not preapproved training material. An *Application for Approval of Material for Public Servant Ethics Training* need not be submitted if the material to be used has already been approved pursuant to §2405.D for the calendar 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 37:

## **§2413. Ethics Training Program Requirements**

A. Programs must be a minimum of one hour in order for the public servant to receive credit for his public servant ethics training, and the public servant must be present during the entirety of the presentation.

B. The program must be offered by a certified trainer.

C. The costs of the program, if any, to the attending public servant must be reasonable considering the subject matter, level of instruction, supporting documentation, and educational material.

D. No examination or testing shall be required at any public servant ethics training program, unless for the sole purpose of attendance verification.

E. The program must be conducted in a physical setting conducive to learning at a time and place free of interruptions.

F. The certified trainer of an approved public servant ethics training program must announce or indicate as follows.

1. This course has been approved by the Louisiana Board of Ethics to meet the Ethics Training requirement pursuant to R.S. 42:1170. The person delivering this program is not employed by the Board of Ethics, and any advice given is informational in nature. No opinions given are those of the Board of Ethics. If you have any questions regarding this program or the Code of Governmental Ethics, do not hesitate to contact the board with your inquiry.

G. At the conclusion of an approved program, each attending public servant must be given the opportunity to complete an evaluation questionnaire addressing the quality, effectiveness, and usefulness of the particular program. Within 30 days of the conclusion of the program, a summary of the results of the questionnaires must be forwarded to the board. If requested, copies of the questionnaires must also be forwarded to the board. Certified trainers must maintain the questionnaires for one year following a program, pending a board request for their submission.

H. To ensure all requirements are met in accordance with this Chapter, the board or its staff may at any time evaluate a program and suspend approval of it. The board and its staff may also at any time evaluate a trainer and suspend his status as a certified trainer. The certified trainer will be given

written reasons for suspension and an opportunity to appear before the board at its next regularly scheduled monthly meeting.

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

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 37:

#### **§2415. Public Servant Attendance Information and Submission; Certified Trainers**

A. Each public servant shall complete a public servant ethics training attendance form while in attendance at an accredited program.

B. Attendance forms will be provided by the certified trainer.

C. Attendance forms shall include an area for the attendee's name, date of birth, agency, signature, course number, and certified trainer name and shall include a clause that states:

1. Your signature on this attendance form is your attestation that you attended the entire program and that you are the person whose identity this form declares. You understand that evidence brought to the attention of the Board of Ethics to the contrary may result in disciplinary action from the board for failure to comply with R.S. 42:1170.

D. The public servant must complete a form while in attendance and leave the form with the certified trainer to be filed and stored by the trainer for a minimum of four years; in the event a request is ever made by the board to view the forms by the board for the purposes of an audit, hearing, investigation, or any other purposes the board deems necessary and proper.

E. The certified trainer shall submit a certification of attendance to the board of Ethics within 30 days after the date of the program. The submission shall be made electronically on the board's website, and shall include the course number, certified trainer's name, the date of the program, and a list of the attendees with each public servant's date of birth and agency.

F. Attendance forms, or any other certification of attendance, will not be accepted by the Board of Ethics from an individual public servant.

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

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 37:

#### **§2417. State Agency Ethics Liaisons; Proctors**

A. A state agency ethics liaison may deliver information, as a proctor, to the public servants in his agency regarding the education and training required pursuant to R.S. 42:1170(A) of the Code of Governmental Ethics, provided the liaison has the training required by R.S. 42:1170(C).

B. If a request is made to the Board of Ethics, the board will provide the proctor access to a recorded presentation regarding the Code of Governmental Ethics, which may include, but is not limited to, a DVD or other presentation through the use of computer software.

C. In order for the public servant to receive credit for his public servant ethics training, the recorded presentation must

be a minimum of one hour, and the public servant must be present for the entirety of the presentation.

D. Proctors for a public servant ethics training program shall announce or indicate as follows, prior to beginning the presentation.

1. This course has been approved by the Louisiana Board of Ethics to meet the ethics training requirement pursuant to R.S. 42:1170. The person delivering this program is not employed by the Board of Ethics, and any advice given is informational in nature. No opinions given are those of the Board of Ethics. If you have any questions regarding this program or the Code of Governmental Ethics, do not hesitate to contact the board with your inquiry.

E. Proctors must adhere to the following when submitting information to the Ethics Administration Program regarding the public servants in their agency.

1. Each public servant shall complete a public servant ethics training attendance form while in attendance at a recorded presentation by the proctor.

2. Attendance forms will be provided by the proctor.

3. Attendance forms shall include an area for the attendees' name, date of birth, agency, signature, course number, and proctor name and shall also include a clause that states:

Your signature on this attendance form is your attestation that you attended the entire presentation and that you are the person whose identity this form declares. You understand that evidence brought to the attention of the Board of Ethics to the contrary may result in disciplinary action from the board for failure to comply with R.S. 42:1170.

4. The public servant must complete a form while in attendance and leave the form with the proctor to be filed and stored by the agency for a minimum of four years; in the event a request is ever made by the board to view the forms by the board for the purposes of an audit, hearing, investigation, or any other purposes the board deems necessary and proper.

5. The proctor shall submit a certification of attendance to the Board of Ethics within 30 days after the date of the program. The submission shall be made electronically on the board's website, and shall include the course number, proctor's name, the date of the program, and a list of the attendees with each public servant's date of birth and agency.

6. Attendance forms, or any other certification of attendance, will not be accepted by the Board of Ethics from an individual public servant.

E. Proctors are required to be present for the entirety of the program.

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

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 37:

#### **Family Impact Statement**

The proposed Rule changes have no impact on family formation, stability or autonomy, as described in R.S. 49.972.

#### **Public Comments**

Interested persons may direct their comments to Kathleen M. Allen, Louisiana Board of Ethics, P.O. Box 4368, Baton



Rouge, LA 70821, telephone (225) 219-5600, until 4:45 p.m. on September 10, 2011.

Kathleen M. Allen  
Ethics Administrator

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Third Party Ethics Training**

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

The cost to implement the rule, regarding third party ethics training and education, is estimated to be \$400 in FY 12, which accounts for the cost to publish the rule change in the State Register. The proposed rules are pursuant to HCR 91 of the 2011 Regular Legislative Session, which provided that the Board of Ethics is to develop a procedure to certify persons and programs to deliver education and training regarding the laws within the jurisdiction of the board to public servants and other persons required to receive education and training.

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

The proposed rule change will have no anticipated effect on revenue collections of state or local governmental units.

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

The proposed rule change may result in an indeterminable cost to those affected persons. If third parties choose to charge for the training program, there will be an increased cost to those public servants attending. The cost of the program will be determined by the third party. The proposed rules specify the costs of the program, if any; to the public servant must be reasonable considering the subject matter, level of instruction, supporting documentation and educational material.

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

The proposed rule change will not have an effect on competition and employment.

Kristy Gary  
Deputy  
1107#025

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Bulletin 111—The Louisiana School, District, and State  
Accountability System  
(LAC 28:LXXXIII.409, 613, 3301, 3303, 3501, and 4313)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 111—The Louisiana School, District, and State Accountability System*: §409. Calculating a 9-12 Assessment Index, §613. Calculating a Graduation Index, §3301. Inclusion of New Schools, §3303. Reconfigured Schools, §3501. Alternative Schools, and §4313. Corrective Actions. Proposed changes in Bulletin 111, Chapter 4, provide detail for dropout adjustment regarding end of course testing, establishing weight for subject-test index scores, and outlines Inclusion of end of

test scores earned in middle school. Proposed changes in Bulletin 111, Chapter 6, provide detail for the change in the calculation of the graduation rate adjustment factor to eliminate a negative effect on schools with a graduation rate above the state goal or current grade target. Proposed changes in Bulletin 111, Chapters 33 and 35, provide detail of clarifications for schools that change grade configurations, merge with other schools, or form two schools from one school. Change in routing policy for alternative schools with student population of 25 percent or less Full Academic Year adds an assessment for students in ninth grade who are pursuing GED and State Skills Certificate. Proposed changes in Bulletin 111, Chapter 43, provide detail to describe entry and exit from district improvement. Act 478 of the 1997 Regular Legislative Session called for the development of an accountability system for the purpose of implementing fundamental changes in classroom teaching by helping schools and communities focus on improved student achievement. The state's accountability system is an evolving system with different components that are required to change in response to state and federal laws and regulations.

**Title 28**

**EDUCATION**

**Part LXXXIII. Bulletin 111—The Louisiana School,  
District, and State Accountability System  
Chapter 4. Assessment, Attendance, and Dropout  
Index Calculations**

**§409. Calculating a 9-12 Assessment Index**

A. All operational end-of-course (EOC) tests will be used in the calculation of the assessment index.

1. All subjects will be weighted equally.

2. Algebra I EOC passing test scores earned by students at a middle school will be included in the SPS calculations of the high school to which the student transfers. The scores will be included in the accountability cycle that corresponds with the students' first year of high school. Middle schools will earn incentive points for EOC passing scores the same year in which the test was administered.

3. Algebra I EOC test scores considered "not passing" will not be transferred to the high school. Students will retake the test at the high school, and the first administration of the test at the high school will be used in the calculation of the assessment index the same year in which it was earned.

B. For all EOC assessments a dropout adjustment factor will not be used in the assessment index.

C. For all GEE assessment data, use the values from the table in §405.A, above.

D. Adjust each subject-test index by the corresponding dropout adjustment factor.

1. The ninth grade dropout adjustment factor is the previous year's ninth grade non-dropout rate plus 4.0 percent (100.0 percent - ninth grade DO rate + 4.0 percent).

2. The tenth grade dropout adjustment factor is the product of the previous year's ninth grade non-dropout rate plus 4.0 percent and the tenth grade non-dropout rate plus 4.0 percent [(100.0 percent - ninth grade DO rate + 4.0 percent) x (100.0 percent - tenth grade DO rate + 4.0 percent)].

3. The eleventh grade dropout adjustment factor is the product of the previous year's ninth grade non-dropout rate plus 4.0 percent and the tenth grade non-dropout rate plus 4.0 percent and the eleventh grade non-dropout rate plus 4.0 percent [(100.0 percent - ninth grade DO rate + 4.0 percent) x (100.0 percent - tenth grade DO rate + 4.0 percent) x (100.0 percent - eleventh grade DO rate + 4.0 percent)].

E. All EOC assessment indices will be equally weighted.

Unit Weights for 9-12 Assessment Index					
Grade	ELA	Math	Science	Social Studies	Total
9th Grade	1000	1000			200
10th Grade	1.25	1.25			2.5
11th Grade			1.25	1.25	2.5

F. Sum all weighted values from Subsection C of this Section.

G. Divide the sum from Subsection D of this Section by the sum of all weights applied to subject-test index scores from the table above (in Subsection C of this Section). This quotient is the 9-12 Assessment Index.

H. Example of 9-12 Assessment Index Calculation

1. Non-dropout rates in this example are; ninth-95.0 percent, tenth-98.0 percent, and eleventh-99.0 percent.

Grade	Subject	Subject-Test Index Score	Dropout Adjustment	Adjusted Subject-Test Index Score	Unit Weight	Weighted Adjusted Subject-Test Index Score
9	ELA	100	.990	99.0	1000	99.0
9	MTH	50	.990	49.5	1000	49.5
10	ELA	100	1.010	101.0	1.25	126.3
10	MTH	150	1.010	151.5	1.25	189.4
11	SCI	50	1.040	52.0	1.25	65.0
11	SS	50	1.040	52.0	1.25	65.0
Sums					7	594.2
9-12 Assessment Index				$594.2 \div 7 = 84.9$		

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1021 (June 2006), amended LR 33:252 (February 2007), LR 36:1989 (September 2010), LR 37:

### Chapter 6. Graduation Cohort, Index, and Rate §613. Calculating a Graduation Index

A. Points shall be assigned for each member of a cohort during the cohort's fourth year of high school according to the following table.

1. Students who do not dropout and do not earn a diploma, a GED, a Skills Certificate, or a Certificate of Achievement after four years of high school are defined as attendees.

Student Result	Points
Academic OR Career/Technical Endorsement	180
TOPS Opportunity Award	160
BESE Approved Industry Based Certification OR TOPS Tech and Dual Enrollment OR TOPS Tech and Articulated Credit	140

Student Result	Points
Regular HS Diploma	120
GED	90
Skills Certificate/Certificate of Achievement	60
Attendee	30
Dropout	0

B. The graduation index of a school shall be the average number of points earned by cohort members.

1. Beginning with the 2011 Baseline SPS, the baseline graduation index shall be adjusted using a factor derived from the cohort graduation rate used in the current subgroup component (see §708).

2. Beginning with the 2012 Growth SPS, the growth graduation index shall be adjusted using a factor derived from the cohort graduation rate used in the prior year's subgroup component (see §708).

3. For 2011-2013, the cohort graduation rate adjustment factor shall be calculated using the appropriate formula:

a. for schools with graduation rate greater than 80: unadjusted graduation index + [(graduation rate - 80) \* 1.5];

b. for schools with graduation rate greater than or equal to the graduation rate target, but less than 80: no adjustment;

c. for schools with graduation rate less than the graduation rate target: unadjusted graduation index + [(graduation rate - graduation rate target) \* 1.5].

4. For 2014, the cohort graduation rate adjustment factor shall be calculated using one formula for all schools: unadjusted graduation index + [(graduation rate - graduation rate target) \* 1.5].

5. The graduation rate target shall be 65 percent in 2011 and increase 5 percent per year until 2014 when it will reflect the goal of 80 percent established in R.S. 17:2928.

C - E. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1025 (June 2006), amended LR 33:2031 (October 2007), LR 33:2594 (December 2007), LR 35:1472 (August 2009), LR 36:1769 (August 2010), repromulgated LR 36:1994 (September 2010), LR 36:2243 (October 2010), LR 37:

### Chapter 33. New Schools and/or Significantly Reconfigured Schools

#### §3301. Inclusion of New Schools

A. - C. ...

D. The new high school in an existing LEA shall enter accountability using its first year of assessment data, adjusted by the district average dropout data.

1. This adjusted assessment index shall be used as a first year baseline SPS to assign letter grades.

2. The baseline in year two shall consist of the adjusted assessment data from year one and assessment data from year two adjusted by the schools own dropout data from year one.

3. The growth SPS in year two shall consist of one year adjusted assessment data.

4. The graduation index calculated from the school's second graduating class shall be included as a baseline SPS

indicator (along with two years of adjusted assessment data in year three of the school's operation).

E. New schools in new districts and new charter schools unaffiliated with existing districts shall enter state accountability after their second year of assessment.

1. Elementary schools shall receive their first baseline scores using two years of assessment data and one year of their own attendance and dropout data.

2. High schools shall receive their first baseline scores using two years of assessment data, the first year unadjusted by dropout data, and the second year adjusted by dropout data.

3. High schools shall receive their first growth scores in their third year of operation.

4. The graduation index calculated from the school's second graduating class shall be included as a baseline SPS indicator, (along with two years of adjusted assessment data) in year three of the school's operation.

F. - G. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2753 (December 2003), amended LR 31:2765 (November 2005), LR 33:2599 (December 2007), LR 36:1992 (September 2010), LR 37:

### **§3303. Reconfigured Schools**

A. Reconfigured schools are identified as schools that change grade configuration, combine two schools with separate sitecodes into one school with a single sitecode, or divide one school into two separate schools with different sitecodes. Data collected at one site shall not be moved to another site and included in accountability results except when two or more schools with dissimilar configurations combine to create one school.

B. Prior to any reconfiguration, the LDE will review the changes to school sites in the planned reconfiguration and will consult with the LEA on the effects that the reconfiguration will have on rewards and/or AUS or subgroup component failure status. After this consultation, the LDE shall make all decisions regarding the effects of these changes on rewards, AUS or subgroup component failure status, and sanctions for all schools effected by the changes and will notify the LEA of its decision. Any AUS, SCF, or AA status and eligibility for participating in any specific programs shall be determined by the LDE.

C. All reconfigurations must be submitted to the sponsor site database before October 1 of the first year of operation under the reconfiguration.

D. High schools with a grade 12 that merge with a school without a grade 12 will retain its graduation data from the prior year.

E. When a high school with a grade 12 merges with another school with a grade 12, the graduation cohort outcome data from both schools will be combined together and recalculated.

F. A district with a K-8 school with a greater than 50 percent change in student enrollment, excluding expected grade progression, may request that the school receive a baseline SPS using the first year of assessment data under the new configuration and a district average for attendance

and dropout data. No growth score shall be calculated nor growth labels assigned.

G. The LDE will consult with the district concerning the SPS calculation when unusual circumstances or configurations exist.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2753 (December 2003), amended LR 30:2446 (November 2004), LR 31:2765 (November 2005), LR 33:2600 (December 2007), LR 36:1993 (September 2010), LR 37:

## **Chapter 35. Inclusion of Alternative Education Schools and Students in Accountability**

### **§3501. Alternative Schools**

A. For the purposes of school accountability, alternative schools are those schools established to meet the specific needs of students with special challenges that require educational environments that are alternatives to the regular classroom. They house one or more programs designed to address discipline, dropout prevention and recovery, credit recovery, etc. Schools are not considered alternative schools in accountability if created to provide programs for students who are academically advanced, gifted, talented, or pursuing specific areas of study (arts, engineering, medical, technical, etc.).

B. Alternative Schools will be classified into three categories.

1. Accountable Alternative School. There is sufficient data to calculate a School Performance Score for all indicators appropriate for school configuration

2. Non-accountable alternative school:

a. there is insufficient data to calculate a statistically reliable School Performance Score for the school; or

b. less than 25 percent of the students in the school are enrolled for a full academic year \*(beginning with the 2011-12 fall accountability release).

3. Alternative Program. The school does not have a site code and students who attend the program are enrolled in another school in the district.

a. All assessment data will be routed back to the school in which the student is enrolled.

b. Requests to convert a school to a program must be submitted for approval prior to the opening of a school year.

C. Beginning with the 2010-11 fall accountability release, the School Performance Scores and Letter Grades of accountable alternative schools will be published with other schools.

1. Accountable alternative schools will be clearly labeled as alternative schools in public releases.

2. School performance scores for alternative schools will exclude the assessment data for students who are not full academic year (FAY) enrollees. The assessment data for non-FAY students will be routed back to the sending school.

D. Beginning in 2011-12, assessment for alternative schools will include a new assessment for students who do not participate in end-of-course tests (EOCT).

1. A system will be used to assign performance levels and points for each level to be used in alternative school

accountability for students in GED and skills certificate programs.

GED/Skills Certificate Options Test	Assessment Points
Basic	150
Approaching Basic	75
Unsatisfactory	0

E. Alternative schools with sufficient data shall also be evaluated in the subgroup component in the same manner as are regular schools.

F. School performance scores and subgroup evaluations for alternative school students shall consist of:

1. the assessment data of all eligible FAY student;
2. the attendance data of all enrollees (K-8 only);
3. the dropout data of all students who have been enrolled for a FAY prior to exiting;
4. graduation data of students who:
  - a. were enrolled at the alternative school for the FAY in their second year of high school;
  - b. entered the alternative school after their fourth year of high school and completed at a higher level. The alternative school earns the incentive points.

G. All eligible accountability data that is not included in the school performance score of the alternative school shall be routed to the sending school when the data collection and aggregation processes can produce accurate results except in the following instances.

1. Students transferring from outside the LEA must be enrolled at a non-alternative school for a FAY to be considered a sending school.
2. Accountability data shall not be routed across district lines except as described in Subsection H of this Section.

H. All eligible accountability data from an alternative school with insufficient data to be included in accountability shall be routed to the sending schools.

I. The Louisiana School for Math, Science, and the Arts shall be included in accountability according to its configuration, but its assessment data shall also be routed to the sending schools provided the sending schools have the same assessed grades as the routed data.

J. For routing purposes, a sending school is the school the student last attended.

K. In those cases where a particular grade-level assessment score must be routed from an alternative school to a sending school where the grade does not exist, scores shall be included as follows.

1. *i*LEAP results will be aggregated with the *i*LEAP grade closest in number or 1 grade-level lower.
2. LEAP/GEE results will be aggregated with the LEAP/GEE grade closest in number with consideration for subject area.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2753 (December 2003), amended 31:423 (February 2005), LR 34:868 (May 2008), LR 35:1472 (August 2009), LR 37:

## Chapter 43. District Accountability

### §4313. Corrective Actions

A. The Louisiana Department of Education shall report district scores and labels on every school district.

B. The district responsibility index and the associated labels are discontinued. Districts must complete a self-assessment only after failing all three clusters in the same subject.

1. The DOE shall review each self-assessment.
2. The DOE may recommend that BESE schedule a district dialogue with the district.

C. Districts that are identified for improvement by the subgroup component shall write district improvement plans based on the prior years' self-assessments and submit those plans to the LDE within 60 days of identification.

1. A district is identified for district improvement Level 1 when it fails to achieve AYP in all three grade-clusters, in the same subject, in the subgroup component for two consecutive years.

a. For 2004 only, districts that failed subgroup AYP in 2003 and who fail all three grade-clusters in the same subject as they failed in 2003, will be identified for district improvement.

2. The DOE shall review each district improvement plan and within 30 days of receipt of the plan, recommend revisions until the plan is deemed acceptable.

3. The DOE may recommend that BESE schedule a district dialogue with the district.

4. The district shall implement the district improvement plan immediately upon approval by the DOE.

D. Districts in District Improvement Level 1 that fail to achieve AYP in all three grade clusters, in the same subject, in the subgroup component for a third consecutive year or for an additional year within the following two years shall enter District Improvement Level 2 and have a district level external review conducted by the LDE.

E. Districts in District Improvement Level 2 that fail to achieve AYP in all three grade clusters, in the same subject, in the subgroup component for a third consecutive year or for an additional year within the following two years shall enter District Improvement Level 3 and address the findings of the district level external review immediately upon identification by implementing one of the following:

1. Fully implement a new curriculum that is based on state standards, providing appropriate professional development that offers substantial promise of improving educational achievement (funding requirements listed in NCLB).

2. Remove particular schools from the jurisdiction of the local educational agency and establish arrangements for public governance and supervision of such schools as provided in R.S. 17:1990 and Chapter 24, Recovery School District.

3. Authorize students to transfer to a higher-performing public school operated by another local educational agency after reaching an agreement with the other LEA.

F. Districts shall exit district improvement if they pass subgroup AYP in the same subject for which they entered

district improvement in the same cluster for two consecutive years. An example is in the following table.

Examples of Districts That Entered District Improvement (DI) in 2004 Due to Math Results							
	2005			2006			Results
	K-5	6-8	9-12	K-5	6-8	9-12	
Cluster Performance	Pass	Fail	Fail	Fail	Pass	Pass	Remain in DI
	Pass	Pass	Pass	Fail	Fail	Fail	Advance to DI Level 2
	Pass	Fail	Fail	Pass	Fail	Fail	Exit DI
	Fail	Pass	Pass	Fail	Fail	Pass	Exit DI

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2757 (December 2003), amended LR 30:1449 (July 2004), LR 31:424 (February 2005), LR 31:635 (March 2005), LR 31:1256 (July 2005), LR 33:1334 (July 2007), LR 33:1612 (August 2007), LR 33:2032 (October 2007), LR 34:429 (March 2008), LR 37:

**Family Impact Statement**

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed Rule? No

**Public Comments**

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., September 19, 2011, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES  
RULE TITLE: Bulletin 111—The Louisiana School, District, and State Accountability System**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
Proposed changes in Bulletin 111, Chapter 4 provide detail for dropout adjustment regarding End of Course Testing, establishing weight for subject-test index scores, and outlines Inclusion of End of Test scores earned in middle school.

Proposed changes in Bulletin 111, Chapter 6 provide detail for the change in the calculation of the graduation rate adjustment factor to eliminate a negative effect on schools with a graduation rate above the state goal or current grade target.

Proposed changes in Bulletin 111, Chapter 33 and 35 provide detail of clarifications for schools that change grade configurations, merge with other schools, or form two schools from one school. Change in routing policy for alternative schools with student population of 25% or less Full Academic Year adds an assessment for students in ninth grade who are pursuing GED and State Skills Certificates.

Proposed changes in Bulletin 111, Chapter 43 provide detail to describe entry and exit from District Improvement.

The proposed rule changes will result in no cost or savings to state or local governmental units.

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

There will be no effect on revenue collections of state or local governmental units.

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

There will be no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

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

There will be no effect on competition and employment.

Beth Scioneaux  
Deputy Superintendent  
1108#030

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Bulletin 119—Louisiana School  
Transportation Specifications and Procedures  
(LAC 28: CXIII.907 and 2509)

In accordance with R.S. 49:950, et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 119, Louisiana School Transportation Specifications and Procedures: §907. Intersections, Turns, Driving Speeds, and Interstate Driving; and §2509. Used School Buses.* The revision to Chapter 9, Section 907, implements a board policy that requires the maximum speed of 35 miles per hour for school buses under conditions that require frequent stops to receive and discharge students when the posted speed is 35 miles per hour or greater. In addition, the revision to Chapter 25, Section 2509, establishes uniform requirements relative to the purchase of used school buses for all school bus owners/operators and school districts. The revision to the policy will allow both tenured and non-tenured school bus owners/operators to purchase used school buses 10 or less model years old.

**Title 28  
EDUCATION**

**Part CXIII. Bulletin 119—Louisiana School Transportation Specifications and Procedures  
Chapter 9. Vehicle Operation  
§907. Intersections, Turns, Driving Speeds, and Interstate Driving**

A. - C.1. ...

2. The maximum speed for school buses shall be 35 miles per hour under conditions that require frequent stops to receive and discharge students when the posted speed is 35 miles per hour or greater.

D.1. - 2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166, and R.S. 32:62.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:835 (May 1999), amended LR 25:2169 (November 1999), LR 36:1472 (July 2010), LR 37:

## **Chapter 25. Purchase, Sale, Lease, and Repair of School Buses**

### **§2509. Used School Buses**

A. ...

B. All replacement school buses, at the time they are acquired by the owner, must be 10 or less model years old for all owners/operators and school districts. The number of years shall be reckoned from the date of the model year (see *Calculating the Age of School Buses*, §3107).

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:644 (April 1999), amended LR 26:639 (April 2000), LR 27:187 (February 2001), LR 36:1479 (July 2010), LR 37:

#### **Family Impact Statement**

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

#### **Public Comments**

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., September 19, 2011, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak  
Executive Director

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

#### **RULE TITLE: Bulletin 119—Louisiana School Transportation Specifications and Procedures**

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

The proposed policy revision to Bulletin 119, Louisiana School Transportation Specifications and Procedures: Chapter 9, Section 907, removes reference to R.S. 32:62, which has been repealed by Act 81 of the Regular Session of the 2010 Legislature. The revision implements a board policy that requires the maximum speed of 35 miles per hour for school buses under conditions that require frequent stops to receive and discharge students when the posted speed is 35 miles per hour or greater.

In addition, the proposed policy revision to chapter 25, section 2509, establishes uniform requirements relative to the purchase of used school buses for all school bus owners/operators and school districts. The revision to the policy will allow both tenured and non-tenured school bus owners/operators to purchase used school buses 10 or less model years old.

The adoption of this policy will cost the Department of Education approximately \$164 due to the expense associated with publication of the proposed policy change in the *Louisiana Register*. There will be no economic impact to local governmental units as a result of the proposed policy change. There are no savings to the state or local governmental units as a result of this policy change.

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

There will be no effect on revenue collections at the state or local government level.

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

There are no costs and/or economic benefits to directly affected persons or non-governmental groups. The previous rule change incorrectly provided for bus drivers of 18 years of age.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition or employment as a result of this rule change.

Beth Scioneaux  
Deputy Superintendent  
1108#031

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

### **NOTICE OF INTENT**

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

Bulletin 741—Louisiana Handbook for School Administrators (LAC 28:CXV.2318, 2319, 2325, and 2326)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 741—Louisiana Handbook for School Administrators*: §2318. The College and Career Diploma, §2319. The Career Diploma, §2325. Advanced Placement and Military Service Credit, and §2326. Military Service Credit. The policy changes to these sections clarify which AP and IB courses substitute for core courses requirements, require schools to provide access to at least one AP course, make it easier to count AP and IB courses for the Academic Endorsement, change the name of the American History course to US History, and adds ChemCom to the Basic Core curriculum. These changes will encourage more students to take AP and IB courses and will increase access to AP courses.

**Title 28**  
**EDUCATION**

**Part CXV. Bulletin 741—Louisiana Handbook for  
School Administrators**

**Chapter 23. Curriculum and Instruction**  
**§2318. The College and Career Diploma**

A. - B.1.c. ...

2. For incoming freshmen in 2010-2011 and beyond, students must meet the assessment requirements below to earn a standard diploma.

a. Students must pass three end-of-course tests in the following categories:

- i. English II or English III;
- ii. Algebra I or Geometry;
- iii. Biology or U.S. History.

B.3 - B.7.a. ...

**C. Minimum Course Requirements**

1. For incoming freshmen prior to 2008-2009, the minimum course requirements for graduation shall be the following.

NOTE: For courses indicated with \*, an Advanced Placement (AP) or International Baccalaureate (IB) course designated in §2325 may be substituted.

a. English—4 units

- i. English I;
- ii. English II;
- iii. English III\*;
- iv. English IV\* or Business English or Senior Applications in English.

b. Mathematics—3 units

- i. Effective for incoming freshmen 2005-2006 and beyond.

(a) All students must complete one of the following:

- (i). Algebra I (1 unit); or
- (ii). Algebra I-Pt. 1 and Algebra I-Pt. 2 (2 units); or

(iii). Integrated Mathematics I (1 unit).

(b) The remaining unit(s) shall come from the following: Integrated Mathematics II, Integrated Mathematics III, Geometry, Algebra II, Financial Mathematics, Advanced Math—Pre-Calculus, Advanced Math—Functions and Statistics, Pre-Calculus\*, Calculus\*, Probability and Statistics\*, Math Essentials, and Discrete Mathematics.

c. Science—3 units

- i. 1 unit of Biology;
- ii. 1 unit from the following physical science cluster: Physical Science, Integrated Science, Chemistry I, Physics I\*\*, Physics of Technology I;

iii. 1 unit from the following courses: Aerospace Science, Biology II\*, Chemistry II\*, Earth Science, Environmental Science\*, Physics II\*, Physics of Technology II, Agriscience II, an additional course from the physical science cluster, or a locally initiated science elective;

iv. Students may not take both Integrated Science and Physical Science;

v. Agriscience I is a prerequisite for Agriscience II and is an elective course.

d. Social Studies—3 units

- i. U.S. History\*;
- ii. Civics\* (1 unit) or 1/2 unit of Civics\* and 1/2 unit of Free Enterprise; and

iii. 1 of the following: World History\*, World Geography\*, Western Civilization\*, or AP European History.

- e. Health Education—1/2 unit
- f. Physical Education—1 1/2 units

i. Shall be Physical Education I and Physical Education II, or Adapted Physical Education for eligible special education students.

ii. A maximum of 4 units of Physical Education may be used toward graduation.

Note: The substitution of JROTC is permissible.

- g. Electives—8 units
- h. Total—23 units

2. For incoming freshmen in 2008-2009 and beyond who are completing the Louisiana basic core curriculum, the minimum course requirements for graduation shall be the following.

NOTE: For courses indicated with \*, an Advanced Placement (AP) or International Baccalaureate (IB) course designated in §2325 may be substituted.

- a. English—4 units
  - i. English I;
  - ii. English II;
  - iii. English III\*;
  - iv. English IV\* or Senior Applications in English.
- b. Mathematics—4 units

i. All students must complete one of the following:

- (a). Algebra I (1 unit);
- (b). Applied Algebra I (1 unit); or
- (c). Algebra I-Pt. 1 and Algebra I-Pt. 2 (2 units).

ii. Geometry or Applied Geometry

iii. The remaining unit(s) shall come from the following: Algebra II, Financial Mathematics, Math Essentials, Advanced Math—Pre-Calculus, Advanced Math—Functions and Statistics, Pre-Calculus\*, Calculus\*, Probability and Statistics\*, Discrete Mathematics, or a locally initiated elective approved by BESE as a math substitute.

- c. Science—3 units
  - i. 1 unit of Biology;
  - ii. 1 unit from the following physical science cluster: Physical Science, Integrated Science, Chemistry I, Physics I\*, Physics of Technology I;
  - iii. 1 unit from the following courses: Aerospace Science, Biology II\*, Chemistry II\*, Earth Science, Environmental Science\*, Physics II\*, Physics of Technology II, Agriscience II, Anatomy and Physiology, ChemCom, an additional course from the physical science cluster, or a locally initiated science elective, or a locally initiated elective approved by BESE as a science substitute;

iv. Students may not take both Integrated Science and Physical Science;

v. Agriscience I is a prerequisite for Agriscience II and is an elective course.

- d. Social Studies—3 units
  - i. U.S. History\*;
  - ii. Civics\* (1 unit) or 1/2 unit of Civics\* and 1/2 unit of Free Enterprise.

NOTE: Students entering the ninth grade in 2011-2012 and beyond must have one unit of Civics with a section on Free Enterprise.

iii. 1 of the following: World History\*, World Geography\*, Western Civilization\*, or AP European History.

- e. Health Education—1/2 unit
  - i. JROTC I and II may be used to meet the Health Education requirement. Refer to §2347.
- f. Physical Education—1 1/2 units
  - i. Shall be Physical Education I and Physical Education II, or Adapted Physical Education for eligible special education students.
  - ii. A maximum of 4 units of Physical Education may be used toward graduation.

NOTE: The substitution of JROTC is permissible.

- g. Electives—8 units
  - i. Shall include the minimum courses required to complete a Career Area of Concentration for incoming freshmen 2010-2011 and beyond.

(a). The Area of Concentration shall include one unit of Education for Careers or Journey to Careers.

h. Total—124 units.

3. For incoming freshmen in 2008-2009 and beyond who are completing the Louisiana Core 4 Curriculum, the minimum course requirements shall be the following.

NOTE: For courses indicated with \*, an Advanced Placement (AP) or International Baccalaureate (IB) course designated in §2325 may be substituted.

- a. English—4 units
    - i. English I;
    - ii. English II;
    - iii. English III\*;
    - iv. English IV\*.
  - b. Mathematics—4 units
    - i. Algebra I, Applied Algebra I, or Algebra I-Pt.
- 2.
- ii. Geometry or Applied Geometry.
  - iii. Algebra II.
  - iv. The remaining unit shall come from the following: Financial Mathematics, Math Essentials, Advanced Math—Pre-Calculus, Advanced Math—Functions and Statistics, Pre-Calculus\*, Calculus\*, Probability and Statistics\*, Discrete Mathematics, or a locally initiated elective approved by BESE as a math substitute.

c. Science—4 units

- i. 1 unit of Biology;
- ii. 1 unit of Chemistry;
- iii. 2 units from the following courses: Physical Science, Integrated Science, Physics I, Physics of Technology I, Aerospace Science, Biology II, Chemistry II, Earth Science, Environmental Science, Physics II\*, Physics of Technology II, Agriscience II, Anatomy and Physiology, or a locally initiated elective approved by BESE as a science substitute.
- iv. Students may not take both Integrated Science and Physical Science;
- v. Agriscience I is a prerequisite for Agriscience II and is an elective course.

vi. A student completing a Career Area of Concentration may substitute one of the following BESE/Board of Regents approved IBC-related course from within the student's Area of Concentration for the fourth required science unit: Advanced Nutrition and Foods; Food Services II; Allied Health Services II; Dental Assistant II; Emergency Medical Technician-Basic (EMT-B); Health Science II; Medical Assistant II; Sports Medicine III; Advanced Electricity/Electronics; Process Technician II;

ABC Electrical II; Computer Service Technology II; Horticulture II; Networking Basics; Routers and Routing Basics; Switching Basics and Intermediate Routing; WAN Technologies; Animal Science; Biotechnology in Agriscience; Environmental Studies in Agriscience; Equine Science; Forestry; Horticulture; Small Animal Care/Management; Veterinary Assistant; and Oracle Academy Course: DB Programming with PL/SQL.

d. Social Studies—4 units

i. Civics\* (1 unit) or 1/2 unit of Civics\* and 1/2 unit of Free Enterprise.

NOTE: Students entering the ninth grade in 2011-2012 and beyond must have one unit of Civics with a section on Free Enterprise.

ii. U.S. History\*;

iii. 1 unit from the following: World History\*, World Geography\*, Western Civilization, or AP European History

iv. 1 unit from the following: World History, World Geography, Western Civilization, AP European History, Law Studies, Psychology, Sociology, Civics (second semester—1/2 credit) or African American Studies.

NOTE: Students may take two half credit courses for the fourth required social studies unit.

v. A student completing a Career and Technical Area of Concentration may substitute one of the following BESE/Board of Regents approved IBC-related course from within the student's Area of Concentration for the fourth required social studies unit: Advanced Child Development; Early Childhood Education II; Family and Consumer Sciences II; ProStart II; T & I Cooperative Education (TICE); Cooperative Agriculture Education; Administrative Support Occupations; Business Communication; Cooperative Office Education; Entrepreneurship – Business; Lodging Management II; Advertising and Sales Promotion; Cooperative Marketing Education I; Entrepreneurship—Marketing; Marketing Management; Marketing Research; Principles of Marketing II; Retail Marketing; Tourism Marketing; CTE Internship; General Cooperative Education II; STAR II.

e. Health Education—1/2 unit

i. JROTC I and II may be used to meet the Health Education requirement. Refer to §2347.

f. Physical Education—1 1/2 units

i. Shall be Physical Education I and Physical Education II, or Adapted Physical Education for eligible special education students.

ii. A maximum of 4 units of Physical Education may be used toward graduation.

NOTE: The substitution of JROTC is permissible.

g. Foreign language – 2 units

i. Shall be 2 units in the same foreign language or 2 speech courses.

h. Arts—1 unit

i. 1 unit Art (§2333), Dance (§2337), Media Arts (§2354), Music (§2355), Theatre Arts, (§2369), or Fine Arts Survey.

ii. A student completing a Career and Technical Area of Concentration may substitute one of the following BESE/Board of Regents approved IBC-related course from within the student's area of concentration for the required applied arts unit: Advanced Clothing and Textiles; ABC Carpentry II TE; ABC Electrical II TE; ABC Welding



Technology II; Advanced Metal Technology; Advanced Technical Drafting; Architectural Drafting; ABC Carpentry II—T&I; ABC Welding Technology II—T&I; Cabinetmaking II; Commercial Art II; Cosmetology II; Culinary Occupations II; Custom Sewing II; Graphic Arts II; Photography II; Television Production II; Upholstery II; Welding II; ABC Carpentry In Agriscience; ABC Electricity in Agriscience; ABC Welding Technology Agriscience; Agriscience Construction Technology; Agriscience Power Equipment; Floristry; Landscape Design and Construction; Introduction to Business Computer Applications; Accounting II; Business Computer Applications; Computer Multimedia Presentations; Desktop Publishing; Keyboarding Applications; Telecommunications; Web Design I and II; Word Processing; and Digital Media II.

- i. Electives—3 units
- j. Total—24 units.

4. High School Area of Concentration

a. All high schools shall provide students the opportunity to complete an area of concentration with an academic focus and/or a career focus.

i. Incoming freshmen prior to 2008-2009 can complete an Academic Area of Concentration by completing the current course requirements for the Taylor Opportunity Program for Students (TOPS) Opportunity Award.

ii. Incoming freshmen in 2008-2009 and beyond can complete an Academic Area of Concentration by completing the course requirements for the LA Core 4 curriculum.

iii. To complete a career area of concentration, students shall meet the minimum requirements for graduation including four elective primary credits in the area of concentration and two related elective credits, including one computer/technology course. Areas of concentration are identified in the career options reporting system with each LEA designating the Career and Technical Education areas of concentration offered in their school system each year. The following computer/technology courses can be used to meet this requirement.

Course	Credit
Computer/Technology Literacy	1
Computer Applications or Business Computer Applications	1
Computer Architecture	1
Computer Science I, II	1 each
Computer Systems and Networking I, II	1 each
Desktop Publishing	1
Digital Graphics & Animation	1/2
Multimedia Presentations	1/2 or 1
Web Mastering or Web Design	1/2
Independent Study in Technology Applications	1
Word Processing	1
Telecommunications	1/2
Introduction to Business Computer Applications	1
Technology Education Computer Applications	1
Advanced Technical Drafting	1
Computer Electronics I, II	1 each
Database Programming with PL/SQL	1
Java Programming	1
Database Design and Programming	1/2
Digital Media I, II	1 each

5. Academic Endorsement

a. Graduating seniors who meet the requirements for a College and Career diploma and satisfy the following

performance indicators shall be eligible for an academic endorsement to the College and Career diploma.

i. Students graduating prior to 2011-2012 shall complete an Academic Area of Concentration. Students graduating in 2011-2012 and beyond shall complete the following curriculum requirements.

NOTE: For courses indicated with \*, an Advanced Placement (AP) or International Baccalaureate (IB) course designated in §2325 may be substituted.

(a). English—4 units

- (i). English I;
- (ii). English II;
- (iii). English III\*;
- (iv). English IV\*.

(b). Mathematics—4 units

- (i). Algebra I or Algebra I-Pt. 2;
- (ii). Geometry;
- (iii). Algebra II;
- (iv). The remaining unit shall come from

the following: Advanced Math—Pre-Calculus, Advanced Math—Functions and Statistics, Pre-Calculus\*, Calculus\*, Probability and Statistics\*, or Discrete Mathematics.

(c). Science—4 units

- (i). Biology;
- (ii). Chemistry;
- (iii). 1 units of advanced science from the

following courses: Biology II, Chemistry II, Physics, or Physics II;

- (iv). 1 additional science course.

(d). Social Studies—4 units

(i). Civics\* (1 unit) or 1/2 unit of Civics\* and 1/2 unit of Free Enterprise.

NOTE: Students entering the ninth grade in 2011-2012 and beyond must have one unit of Civics with a section on Free Enterprise.

- (ii). American History U.S. History\*\*;

(iii). 1 unit from the following: World History\*\*, World Geography\*\*, Western Civilization, or AP European History

(iv). 1 unit from the following: World History, World Geography, Western Civilization, AP European History, Law Studies, Psychology, Sociology, or African American Studies.

(e). Health Education—1/2 unit

(i). JROTC I and II may be used to meet the Health Education requirement. Refer to §2347.

(f). Physical Education—1 1/2 units

(i). Shall be Physical Education I and Physical Education II, or Adapted Physical Education for eligible special education students.

ii. Assessment Performance Indicator

(a) Students graduating prior to 2013-2014 shall pass all four components of GEE with a score of *Basic* or above, or one of the following combinations of scores with the English language arts score at *Basic* or above:

- (i) one *Approaching Basic*, one *Mastery* or *Advanced*, *Basic* or above in the remaining two; or
- (ii) two *Approaching Basic*, two *Mastery* or above.

(b) Students graduating in 2013-2014 and beyond shall achieve a score of *Good* or *Excellent* on each of the following EOC tests:

- (i). English II and English III;
- (ii). Algebra I and Geometry;

(iii).Biology and U.S. History.  
iii. Students shall complete one of the following requirements:

- (a). senior project;
- (b). one Carnegie unit in an AP course and attempt the AP exam;
- (c). one Carnegie unit in an IB course and attempt the IB exam; or
- (d). three college hours of non-remedial, articulated credit in mathematics, social studies, science, foreign language, or English language arts.

iv. Students shall meet the current minimum grade-point average requirement for the TOPS Opportunity Award.

v. Students shall achieve an ACT Composite Score of at least 23 or the SAT equivalent.

6. Career/Technical Endorsement

a. Students who meet the requirements for a College and Career diploma and satisfy the following performance indicators shall be eligible for a career/technical endorsement to the College and Career diploma.

i. Students graduating prior to 2011-2012 shall meet the current course requirements for the TOPS Opportunity Award or the TOPS Tech Award. Students graduating in 2011-2012 and beyond shall meet the course requirements for the Louisiana Core 4 Curriculum.

ii. Students shall complete the career area of concentration.

iii. Assessment Performance Indicator

(a). Students graduating prior to 2009-2010 shall pass the English language arts, mathematics, science, and social studies components of the GEE at the *Approaching Basic* level or above. Students graduating in 2009-2010 and beyond prior to 2013-2014 shall pass all four components of the GEE with a score of basic or above OR one of the following combinations with the English language arts score at basic or above:

- (i). one *Approaching Basic*, one *Mastery* or *Advanced*, and *Basic* or above in the remaining two;
- (ii). two *Approaching Basic*, two *Mastery* or above.

(b) Students graduating in 2013-2014 and beyond shall achieve a score of *Good* or *Excellent* on each of the following EOC tests:

- (i). English II and English III;
- (ii). Algebra I and Geometry;
- (iii). Biology and U.S. History.

iv. Students shall complete a minimum of 90 work hours of work-based learning experience related to the student's area of concentration (as defined in the *LDE Diploma Endorsement Guidebook*) or senior project related to student's area of concentration with 20 hours of related work-based learning and mentoring and complete one of the following requirements:

(a). industry-based certification in student's area of concentration from the list of industry-based certifications approved by BESE; or

(b). three college hours in a career/technical area that articulate to a postsecondary institution, either by actually obtaining the credits and/or being waived from having to take such hours in student's area of concentration.

v. Students shall achieve a minimum GPA of 2.5.  
vi. Students graduating prior to 2008-2009 shall achieve the current minimum ACT Composite Score (or SAT Equivalent) for the TOPS Opportunity Award or the TOPS Tech Award. Students graduating in 2008-2009 and beyond shall achieve a minimum ACT Composite Score (or SAT Equivalent) of 20 or the state ACT average (whichever is higher) or the Silver Level on the WorkKeys Assessment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4; R.S. 17:183.2; R.S. 17: 395.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1291 (June 2005), amended LR 31:2211 (September 2005), LR 31:3070 (December 2005), LR 31:3072 (December 2005), LR 32:1414 (August 2006), LR 33:429 (March 2007), LR 33:432 (March 2007), LR 33:2050 (October 2007), LR 33:2354 (November 2007), LR 33:2601 (December 2007), LR 34:1607 (August 2008), LR 36:1486 (July 2010), LR 37:547 (February 2011), LR 37:

**§2319. The Career Diploma**

A. - B.1.c. ...

2. For incoming freshmen in 2010-2011 and beyond, students must meet the assessment requirements below to earn a high school diploma.

a. Students must pass three end-of-course tests in the following categories:

- i. English II or English III;
- ii. Algebra I or Geometry;
- iii. Biology or U.S. History.

B.3. - B.7.a. ...

C. Minimum Course Requirements

1. The minimum course requirements for a career diploma shall be the following.

a. English—4 units

- i. English I;
- ii. English II;

iii. The remaining units shall come from the following: Technical Reading and Writing; Business English; Business Communications; Using Research in Careers (1/2 credit); American Literature (1/2 credit); Film in America (1/2 credit); English III; English IV; Senior Applications in English; or a course developed by the LEA and approved by BESE.

b. Mathematics—4 units

i. Algebra I (1 unit), Applied Algebra I (1 unit), or Algebra I-Pt. 2 and Algebra I-Pt. 2 (2 units);

ii. The remaining units shall come from the following: Geometry or Applied Geometry; Technical Math; Medical Math; Applications in Statistics and Probability; Financial Math; Math Essentials; Algebra II; Advanced Math—Pre-Calculus; Discrete Mathematics; or course(s) developed by the LEA and approved by BESE.

c. Science—3 units

i. 1 unit of Biology;

ii. 1 unit from the following physical science cluster: Physical Science, Integrated Science, Chemistry I, ChemCom, Physics I, Physics of Technology I;

iii. 1 unit from the following courses: Food Science; Forensic Science; Allied Health Science; Basic Body Structure and Function; Basic Physics with Applications; Aerospace Science; Earth Science; Agriscience II; Physics of Technology II; Environmental Science; Anatomy and Physiology; Animal Science; Biotechnology in Agriculture; Environmental Studies in Agriculture; Health

Science II; EMT—Basic; an additional course from the physical science cluster; or course(s) developed by the LEA and approved by BESE.

d. Social Studies—3 units

i. U.S. History;

ii. Civics (1 unit) or 1/2 unit of Civics and 1/2 unit of Free Enterprise.

NOTE: Students entering the ninth grade in 2011-2012 and beyond must have one unit of Civics with a section on Free Enterprise.

iii. 1 of the following: The remaining unit shall come from the following: Child Psychology and Parenthood Education; Law Studies; Psychology; Sociology; World History; World Geography; Western Civilization; Economics; American Government; African American Studies; or a course developed by the LEA and approved by BESE.

e. Health Education—1/2 unit

i. JROTC I and II may be used to meet the Health Education requirement. Refer to §2347.

f. Physical Education—11/2 units

i. Shall be Physical Education I and Physical Education II, or Adapted Physical Education for eligible special education students.

ii. A maximum of 4 units of Physical Education may be used toward graduation.

NOTE: The substitution of JROTC is permissible.

g. Career and Technical Education—7 credits

i. Education for Careers or Journey to Careers;

ii. Six credits required for a career Area of Concentration.

h. Total—23 units

C.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4; R.S. 17:183.2; R.S. 17:183.3; R.S. 17:274; R.S. 17:274.1; R.S. 17:395.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1291 (June 2005), amended LR 31:2211 (September 2005), LR 31:3070 (December 2005), LR 31:3072 (December 2005), LR 32:1414 (August 2006), LR 33:429 (March 2007), LR 33:432 (March 2007), LR 33:2050 (October 2007), LR 33:2354 (November 2007), LR 33:2601 (December 2007), LR 34:1607 (August 2008), LR 35:1230 (July 2009), LR 35:1876 (September 2009), LR 35:2321 (November 2009), LR 35:2750 (December 2009), LR 36:1490 (July 2010), LR 37:548 (February 2011), LR 37:1130 (April 2011), LR 37:2130 (July 2011), LR 37:

**§2325. Advanced Placement and International Baccalaureate**

A. Each high school shall provide students access to at least one Advanced Placement (AP) or International Baccalaureate (IB) course.

B. High school credit shall be granted to a student successfully completing an AP course or an IB course, regardless of his test score on the examination provided by the College Board or on the IB exam.

1. Procedures established by the College Board must be followed.

2. Courses listed in the program of studies may be designated as advanced placement courses on the student's transcript by following procedures established by the DOE.

a. The chart below lists the College Board AP course titles, the IB course titles, and the corresponding Louisiana course titles for which these courses can be substituted.

College Board AP Course Title(s)	IB Course Title	Louisiana Course Title
Art History		AP Art History
Biology	Biology II IB	Biology II
	Biology III IB	Biology Elective
Calculus AB	Math Methods II IB	Calculus
Calculus BC		AP Calculus BC
Chemistry		Chemistry II
Computer Science A		AP Computer Science A
Computer Science AB		AP Computer Science AB
Economics: Macro	Economics IB	Economics
Economics: Micro		AP Economics: Micro
English Language and Composition	English III IB	English III
English Literature and Composition	English IV IB	English IV
Environmental Science	Environmental Systems IB	Environmental Science
European History		AP European History
French Language	French IV IB	French IV
	Film Study I IB	Visual Arts Elective
	Film Study II IB	Visual Arts Elective
French Literature	French V IB	French V
German Language		German IV
Government and Politics: Comparative		AP Government and Politics: Comparative
Government and Politics: United States		AP Government and Politics: United States (substitute for Civics)
Human Geography	World Geography IB	World Geography
	Informational Technology IB	Computer Systems/Networking I
Latin Literature		Latin V
Latin: Vergil		Latin IV
	Math Methods I IB	Pre-Calculus
	Music I IB	Music Theory I
Music Theory	Music II IB	Music Theory II
Physics B	Physics I IB	Physics
Physics C: Electricity and Magnetism		AP Physics C: Electricity and Magnetism
Physics C: Mechanics		AP Physics C: Mechanics
	Physics II IB	Physics II
Psychology		Psychology
Spanish Language	Spanish IV IB	Spanish IV
Spanish Literature	Spanish V IB	Spanish V
Statistics		Probability and Statistics
Studio Art: 2-D Design	Art/Design IV IB	Art IV
Studio Art: 3-D Design		AP Studio Art 3-D Design
Studio Art: Drawing	Art Design III IB	Art III

College Board AP Course Title(s)	IB Course Title	Louisiana Course Title
	Theory of Knowledge I IB	Social Studies Elective
	Theory of Knowledge IB	Social Studies Elective
U.S. History	U.S. History IB	U.S. History
World History		World History
	World History IB	Western Civilization

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1294 (June 2005), amended LR 34:2032 (October 2008), LR 37:

**§2326. Military Service Credit**

A. Two units of elective credit toward high school graduation shall be awarded to any member of the United States Armed Forces, their reserve components, the National Guard, or any honorably discharged veteran who has completed his/her basic training, upon presentation of a military record attesting to such completion.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1294 (June 2005), amended LR 34:2032 (October 2008), LR 37:

**Family Impact Statement**

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No
2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No
3. Will the proposed Rule affect the functioning of the family? No
4. Will the proposed Rule affect family earnings and family budget? No
5. Will the proposed Rule affect the behavior and personal responsibility of children? No
6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes

**Public Comments**

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., September 19, 2011, to: Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Bulletin 741—Louisiana  
Handbook for School Administrators**

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

The policy changes to these sections clarify which AP and IB courses substitute for core courses requirements, require schools to provide access to at least one AP course, make it easier to count AP and IB courses for the Academic Endorsement, change the name of the American History course to US History, and adds ChemCom to the Basic Core curriculum.

It is possible that the requirement to provide students access to an AP course may add additional cost for a school if the school does not offer AP courses and does not have a teacher who can teach an AP course. If a school chooses to use the Louisiana Virtual School for an AP course, there is a charge of \$150 per student. There is no way to know if other distance learning providers charge fees if a school chooses to use another distance learning provider. There is no increase in cost to state governmental units.

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

There will be no effect on revenue collections of state or local governmental units.

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

There will be no costs or economic benefits to directly affected persons or non-governmental groups.

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

There will be no effect on competition and employment.

Beth Scioneaux  
Deputy Superintendent  
1108#032

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

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

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 741—Louisiana Handbook for School Administrators: §2321, Carnegie Credit for Middle School Students*. This policy revision adds additional courses to the list of courses that middle school students can take for Carnegie credit. This change will allow qualified middle school students to take high school electives in a career area.

**Title 28  
EDUCATION**

**Part CXV. Bulletin 741—Louisiana Handbook for  
School Administrators**

**Chapter 23. Curriculum and Instruction**

**§2321. Carnegie Credit for Middle School Students**

A. Students in grades five through eight are eligible to receive Carnegie credit for courses in the high school program of studies in mathematics, science, social studies, English, foreign language, keyboarding/keyboarding applications, introduction to business computer applications, computer/technology literacy, health education, Journey to Careers, JAG, Agriscience I, or Family and Consumer Sciences I.

B. - F.1. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1293 (June 2005), amended LR 33:430 (March 2007), LR 33:2601 (December 2007), LR 34:609 (April 2008), LR 34:2031 (October 2008), LR 35:443 (March 2009), LR 35:2319 (November 2009), repromulgated LR 36:59 (January 2010), amended LR 36:2260 (October 2010), LR 37:2129 (July 2011), LR 37:

**Family Impact Statement**

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

**Public Comments**

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., September 19, 2011, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak  
Executive Director

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

**RULE TITLE: Bulletin 741—Louisiana Handbook for  
School Administrators—Carnegie Credit for Middle  
School Students**

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

This policy revision to Section 2321 adds additional courses to the list of courses that middle school students can take for Carnegie credit. This change will allow qualified middle school students to take high school electives in a career area. These changes will not result in an increase in costs or savings to state or local governmental units.

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

There will be no effect on revenue collections of state or local governmental units.

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

There will be no costs or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

Beth Scioneaux  
Deputy Superintendent  
1108#033

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Bulletin 741 (Nonpublic)—Louisiana Handbook for Nonpublic School Administrators—Distance Learning (LAC 28:LXXIX.2523)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 741—Louisiana Handbook for Nonpublic School Administrators: §2523. Distance Learning*. This policy revision aligns the policy for nonpublic schools with the recently revised policy for public schools. These changes are required to update the policy with the newest changes in and requirements for online and distance learning. The revisions were recommended by a committee of educators specializing in online learning.

**Title 28**

**EDUCATION**

**Part LXXIX. Bulletin 741 (Nonpublic)—Louisiana  
Handbook for Nonpublic School Administrators—  
Programs of Study**

**Chapter 25. Career/Technical Education Course Offerings**

**§2523. Distance Learning**

A. A school choosing to implement a distance education program shall establish policy and procedures for reviewing and approving programs that meet the following standards for distance education as established by BESE.

1. Distance education shall comply with all BESE policies related to nonpublic schools.

2. The school shall meet the following requirements related to the development of a standards-based distance education program. A *receiving* school is defined as any school that has students enrolled in courses via distance education. A *provider* could be an LEA, school, agency or educational organization.

a. The receiving school shall authorize each distance education course and ensure that the rigor and breadth meets appropriate course content requirements.

b. The receiving school shall ensure that instruction is provided by teachers certified or qualified in the course/subject in which they are teaching with training in the delivery method, including appropriate media and pedagogy.

c. The receiving school shall verify that college and university advanced placement and/or college dual enrollment course instructional staff not holding Louisiana state teacher credentials are validated as subject matter experts by the providing institution.

d. The receiving school shall ensure that all students enrolled in a distance learning course are provided with the necessary course materials and technical support.

e. The receiving school shall evaluate the effectiveness of each authorized distance education course based on course completion rates and student achievement.

f. The provider shall define minimum prerequisite technology competencies for student participation in distance education courses if such competencies are required for course access.

g. The provider shall also make available to the student an orientation to the course delivery method prior to or at the start of the course.

h. The provider shall ensure that teachers delivering instruction in distance education courses use a variety of methods to assess the mastery of the content as reflected in the *Louisiana Content Standards*.

i. The provider shall provide to the receiving school a complete syllabus and a list of required materials prior to course implementation.

j. The provider shall ensure that all course content complies with copyright fair use laws, including The Technology, Education, and Copyright Harmonization Act (TEACH Act).

k. Online Course providers shall ensure access to the courses' web content by using non-proprietary technologies (html).

l. Schools and course providers shall make courses available to all students by complying with web accessibility guidelines and standards (W3C, section 508, and Louisiana and institutional guidelines) to the maximum extent reasonably possible.

m. The provider shall supply course content that is designed to meet the following criteria:

i. based on current perspectives of learning theories and curriculum standards;

ii. systematic in design, clearly written and revised based on student performance and feedback;

iii. uses appropriate presentation methods, media and pedagogy;

iv. engages students in a variety of learning activities based on various learning styles;

v. accommodates individual differences, including student disabilities; and

vi. encourages student-to-teacher and student-to-student interaction.

### 3. Management and Administration

a. The receiving school shall award credit and grades for distanced education courses assigned by the distance education provider and instructor with no deviations.

b. The receiving school shall ensure that a facilitator who is a Louisiana licensed or qualified teacher is

assigned to and is actively engaged with each student participating in distance education courses.

c. The receiving school shall ensure that the facilitator adheres to guidelines determined by the provider and the policies in this Section.

d. The receiving school shall provide adequate, timely, and appropriate technical support to students, teachers, and facilitators.

e. The receiving school shall ensure that the facilitators are provided ongoing staff development appropriate to the delivery method used, supporting distance education courses technically and instructionally.

f. The receiving school shall ensure that students have appropriate, equitable, and adequate access for course participation.

g. In the event of short- and long-term interruptions, the school shall establish an alternative method of instruction in cooperation with the provider.

h. The provider shall judiciously address issues relative to course load and student-teacher ratio as appropriate for the particular method of delivery, course content, and teacher competency to ensure effective student interaction and course management.

i. Students will be enrolled, added, and dropped as outlined in the school policies.

j. The provider shall ensure that the teacher providing instruction is provided adequate technical support to ensure ease of use for faculty and students.

k. The provider shall furnish training and/or support in designing course content to fit the delivery methods proposed for distance education courses.

l. The teacher delivering instruction and the facilitator, through ongoing communication, shall be responsible for verifying student participation and performance.

m. The teacher delivering instruction shall provide alternate course procedures and activities for use in case of technical and other course delivery problems arise that prevent normal course delivery.

n. The teacher delivering instruction shall an atmosphere conducive to optimal learning, including but not limited to monitoring online discussions and other instructional activities.

o. The teacher delivering instruction shall practice ethical and legal use of equipment and instructional resources.

p. The facilitator shall practice ethical and legal use of equipment and instructional resources.

q. The teacher delivering instruction and the facilitator through ongoing communication shall be responsible for verifying student participation and performance.

r. The facilitator shall implement alternate course procedures when technical and other course delivery problems prevent normal course delivery.

s. The facilitator shall maintain an atmosphere conducive to optimal learning including but not limited to monitoring online discussions and other instructional activities as they occur in the classroom as directed by the teacher delivering instruction.

### 4. Specifications

- a. The receiving school shall provide students enrolled in distance education courses technical access which meets specifications furnished by the course provider.
- b. The receiving school shall provide instructional and communication hardware which meets specifications furnished by the course provider.
- c. The receiving school shall fund and provide timely and appropriate technical support.
- d. The provider will furnish course technical requirements sufficiently in advance so districts may make informed decisions about participation.
- e. Course providers will ensure they have the appropriate technical infrastructure to support their course offerings for effective course delivery.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4; R.S. 17:183.3.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:3092 (December 2005), amended LR 37:

#### Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

#### Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., September 19, 2011, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak  
Executive Director

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

##### RULE TITLE: Bulletin 741 (Nonpublic)—Louisiana Handbook for Nonpublic School Administrators—Distance Learning

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

This policy revision to Section 2523 aligns the policy for nonpublic schools with the recently revised policy for public schools. These changes are required to update the policy with the newest changes in and requirements for online and distance learning. These changes will not result in an increase in costs or savings to state or local governmental units.

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

There will be no effect on revenue collections of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
 

There will be no costs or economic benefits to directly affected persons or non-governmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
 

There will be no effect on competition and employment.

Beth Scioneaux  
Deputy Superintendent  
1108#034

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

#### NOTICE OF INTENT

##### Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel (LAC 28:CXXXI.233, 235, 237, 241, 243, 605, and 625)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 746—Louisiana Standards for State Certification of School Personnel*: §233. The Practitioner Teacher Program Alternative Path to Certification (Minimum Requirements), §235. The Master's Degree Program Alternative Path to Certification (Minimum Requirements), §237. Certification-Only Program Alternative Path to Certification, §241. PRAXIS I Scores, §243. ACT/SAT Scores in Lieu of PRAXIS I Scores, §605. Requirements to add Early Childhood (Grades PK-3), and §625. Requirements to add Early Interventionist Birth to Five Years. This revision of the Praxis examination policy would allow the replacement of the current Praxis exams in Art, Social Studies, Technology Education, and the Principles of Learning and Teaching exams with new editions of the following Praxis exams: Art: Content Knowledge (0134), Social Studies: Content and Interpretation (0086), Technology Education (0051), Principles of Learning and Teaching: Early Childhood (0621), Principles of Learning and Teaching: K-6 (0622), Principles of Learning and Teaching: 5-9 (0623), and Principles of Learning and Teaching: 7-12 (0624) effective January 1, 2012. The current Praxis exams required for Louisiana licensure in art, social studies, technology education and the Principles of Learning and Teaching exams are being phased out by Educational Testing Service.

#### Title 28

#### EDUCATION

##### Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel

##### Chapter 2. Louisiana Teacher Preparation Programs Subchapter B. Alternate Teacher Preparation Programs §233. The Practitioner Teacher Program Alternative Path to Certification (Minimum Requirements)

A. - H. ...

- I. Program requirements must be met within a three year time period. For certification purposes, private providers and

colleges or universities will submit signed statements to the Department of Education indicating that the student completing the Practitioner Teacher Program alternative certification path met the following requirements:

1. passed the PPST components of the Praxis

NOTE: This test was required for admission.

2. completed all program requirements including the internship with a 2.50 or higher GPA (this applies to candidates in a university program);

3. completed prescriptive plans (if weaknesses were demonstrated);

4. passed the Praxis specialty examination for the area(s) of certification;

Note: This test was required for admission.

- a. grades PK-3—Elementary Education: Content Knowledge (#0014);

- b. grades 1-5 (regular and special education)—Elementary Education: Content Knowledge (#0014);

- c. grades 4-8 (regular and special education)—middle school subject-specific licensing examination(s) for the content area(s) to be certified;

- d. grades 6-12 (regular and special education)—secondary subject-specific examination(s) for the content area(s) to be certified. General-special education mild/moderate candidates must pass a Praxis core subject area exam (English/language arts, foreign language, mathematics, the sciences, or social studies). If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area for admission to the program;

- e. all-level K-12 areas (art, dance, foreign language, health and physical education, and music)—Subject-specific examination(s) for content area(s) to be certified. If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area for admission to the program;

5. passed the pedagogy examination (Praxis):

- a. grades PK-3—Principles of Learning and Teaching Early Childhood (#0621);

- b. grades 1-5—Principles of Learning and Teaching K-6 (#0622);

- c. grades 4-8—Principles of Learning and Teaching 5-9 (#0623);

- d. grades 6-12—Principles of Learning and Teaching 7-12 (#0624);

- e. all-level K-12 certification—Principles of Learning and Teaching K-6, 5-9, or 7-12;

- f. general-special education mild/moderate—Special Education: Core Knowledge and Mild to Moderate Applications (#0543); in addition to one of the following aligned to candidates grade level:

- i. grades 1-5—Principles of Learning and Teaching K-6 (#0622);

- ii. grades 4-8—Principles of Learning and Teaching 5-9 (#0623);

- iii. grades 6-12—Principles of Learning and Teaching 6-12 (#0624);

I.6. - L. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1790 (October 2006), amended LR 34:1387 (July 2008), LR 35:1477 (August 2009), LR 36:2261 (October 2010), LR 36:2263 (October 2010), LR 37:549 (February 2011), LR 37:558 (February 2011), LR 37:

### **§235. The Master's Degree Program Alternative Path to Certification (Minimum Requirements)**

A - D.5.a. ...

E. Certification Requirements. Colleges/universities will submit signed statements to the Louisiana Department of Education indicating that the student completing the Master's Degree Program alternative certification path met the following requirements:

1. passed PPST components of Praxis (as required for admission);

2. completed all coursework in the master's degree alternate certification program with a 2.50 or higher grade point average (GPA);

3. passed the specialty examination (Praxis) for the area of certification (this test was required for admission):

- a. grades PK-3 (regular education)—Elementary Education: Content Knowledge (#0014);

- b. grades 1-5 (regular education and mild/moderate)—Elementary Education: Content Knowledge (#0014);

- c. grades 4-8 (regular education and mild/moderate)—middle school subject-specific licensing examination for content area to be certified;

- d. grades 6-12 (regular education and mild/moderate)—Secondary subject-specific examination for content area(s) to be certified. General-special education mild/moderate candidates must pass a Praxis core subject area exam (English/language arts, foreign language, mathematics, the sciences, or social studies). If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area for admission to the program;

- e. all-level K-12 certification—Subject-specific examination for content area(s) to be certified. If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area for admission to the program;

- f. Special Education Early Interventionist (Birth to Five Years), Significant Disabilities 1-12, Hearing Impaired K-12, and Visual Impairments/Blind K-12—Elementary Education: Content Knowledge (#0014) specialty examination;

4. passed the pedagogy examination (Praxis):

- a. grades PK-3—Principles of Learning and Teaching Early Childhood (#0621);

- b. grades 1-5—Principles of Learning and Teaching K-6 (#0622);

- c. grades 4-8—Principles of Learning and Teaching 5-9 (#0623);

- d. grades 6-12—Principles of Learning and Teaching 7-12 (#0624);

- e. all-level K-12 certification—Principles of Learning and Teaching K-6, 5-9, or 7-12;

- f. General-Special Education Mild/Moderate—Special Education: Core Knowledge and Mild to Moderate



Applications (#0543); in addition to one of the following aligned to candidates grade level:

- i. grades 1-5—Principles of Learning and Teaching K-6 (#0622);
- ii. grades 4-8—Principles of Learning and Teaching 5-9 (#0623);
- iii. grades 6-12—Principles of Learning and Teaching 6-12 (#0624);
- g. Special Education Early Interventionist Birth to Five Years—Special Education: Core Knowledge and Applications (#0354) and Principles of Learning and Teaching: Early Childhood (#0621);
- h. Special Education Significant Disabilities 1-12—Special Education: Core Knowledge and Severe to Profound Applications (#0545);
- i. Special Education Hearing Impaired K-12—Special Education: Core Knowledge and Applications (#0354) and Education of Exceptional Students: Hearing Impairment (#0271);
- j. Special Education Visual Impairments/Blind K-12—Special Education: Core Knowledge and Applications (#0354);

5. prior to receiving a Level 1 or higher professional teaching certificate, a candidate who entered an alternate certification program after May 1, 2004, is required to demonstrate proficiency in the reading competencies as adopted by the BESE through either of the following:

- a. successfully complete the same number of semester hours in reading as required for undergraduate teacher preparation programs:
  - i. early childhood PK-3 or elementary 1-5 programs—9 hours;
  - ii. middle grades 4-8 programs—6 hours;
  - iii. secondary 6-12 or All-Level K-12 programs—3 hours;
  - iv. special education areas (early interventionist, hearing impaired, significant disabilities, or visually impaired)—9 hours; or
- b. passes a reading competency assessment.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 32:1792 (October 2006), amended LR 35:1480 (August 2009), LR 36:2262 (October 2010), LR 36:2263 (October 2010), LR 37:549 (February 2011), LR 37:

**§237. Certification-Only Program Alternative Path to Certification**

A. - D.7. ...

E. Licensure Requirements

1. Practitioner License (PL2)—a program candidate that is hired as a full-time teacher in an approved Louisiana school will be issued a Practitioner License 2. This license is issued at the request of the Louisiana employing school system for a specific grade level and content area once successful completion of the classroom readiness component has been verified. The teacher is restricted to the specific grade level and content area as designated on the Practitioner License 2.

2. Standard Professional License—a standard Level certificate may be issued after the applicant has:

- a. completed all program requirements with a 2.50 or higher GPA (this applies to candidates in a university program); and
- b. passed the pedagogy examination (Praxis):
  - i. grades PK-3—Principles of Learning and Teaching Early Childhood (#0621)
  - ii. grades 1-5—Principles of Learning and Teaching K-6 (#0622);
  - iii. grades 4-8—Principles of Learning and Teaching 5-9 (#0623);
  - iv. grades 6-12—Principles of Learning and Teaching 7-12 (#0624);
  - v. all-level K-12 certification—Principles of Learning and Teaching K-6, 5-9, or 7-12;
  - vi. Special Education Early Interventionist Birth to Five Years—Special Education: Core Knowledge and Applications (#0354) and Principles of Learning and Teaching Early Childhood (#0621);
  - vii. Special Education Significant Disabilities 1-12—Special Education: Core Knowledge and Severe to Profound Applications (#0545);
  - viii. Special Education Hearing Impaired K-12—Special Education: Core Knowledge and Applications (#0354) and Education of Exceptional Students: Hearing Impairment (#0271);
  - ix. Special Education Visual Impairments/Blind K-12—Special Education: Core Knowledge and Applications (#0354);
- c. completed all requirements of the Certification-Only Alternative Certification path as verified to the Louisiana Department of Education by the program provider.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 32:1794 (October 2006), amended LR 35:1482 (August 2009), LR 36:2262 (October 2010), LR 36:2263 (October 2010), LR 37:550 (February 2011), LR 37:

**§241. PRAXIS I Scores**

Repealed.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 32:1836 (October 2006), amended LR 33:2355 (November 2007), LR 35:644 (April 2009), LR 36:484 and 487 (March 2010), LR 36:2264 (October 2010), repealed LR 37:

**Subchapter C. Louisiana Testing Requirements**

**§243. PRAXIS Exams and Scores**

A. A teacher applicant for certification must successfully complete the appropriate written or computer delivered tests<sup>1</sup> identified prior to Louisiana teacher certification.

1. Pre-Professional Skills Tests<sup>2</sup>. Teacher applicants in all content areas must pass all three Praxis I Pre-Professional Skills tests.

Pre-Professional Skills Test "Paper Administrations"	Test #	Score	Effective Date
PPST:R – Pre-Professional	0710	172	Effective  1/16/02
	0720	171	
Skills Test: Reading	0730	170	

Pre-Professional Skills Test "Paper Administrations"	Test #	Score	Effective Date	
PPST:W – Pre-Professional  Skills Test: Writing	0710	174	Effective 7/1/07	
	0720	173		
	0730	172		
	PPST:M – Pre-Professional  Skills Test:  Mathematics	0710	176	Effective 7/1/10
		0720	175	
		0730	175	

Pre-Professional Skills Test "Computer Based Administrations"	Test #	Score	Effective Date
PPST:R – Pre-Professional  Skills Test: Reading	0711	319	Prior to 1/16/02
	0721	316	
	0731	315	
PPST:W – Pre-Professional  Skills Test: Writing			
PPST:M – Pre-Professional  Skills Test:  Mathematics			
PPST:R – Pre-Professional  Skills Test: Reading	5710	172	Effective 1/16/02
	5720	171	
	5730	170	
PPST:W – Pre-Professional	5710	174	Effective 7/1/07
	5720	173	

Pre-Professional Skills Test "Computer Based Administrations"	Test #	Score	Effective Date
Skills Test: Writing	5730	172	Effective 7/1/10
	5710	176	
	5720	175	
PPST:M – Pre-Professional	5730	175	
Skills Test:			
Mathematics		175	

## 2. Core Battery Exams<sup>3</sup>

Communications Skills (CS)	0500	645	Prior to 9/1/99
General Knowledge (GK)	0510	644	
Professional Knowledge (PK)	0520	645	

<sup>1</sup>To differentiate the computer delivered tests, Educational Testing Service has placed the number "5" preceding the current test code. The department will accept computer delivered passing test scores for licensure.

<sup>2</sup>Note: Effective September 1, 2006: An ACT composite score of 22 or a SAT combined verbal and math score of 1030 may be used in lieu of Praxis I PPST Exams by prospective teachers in Louisiana.

<sup>3</sup>After 9/1/99 PPST Reading and Writing replaced CS; PPST Math replaced GK; and PLTs replaced PK.

## 3. Principles of Learning and Teaching (PLT) Exams

Principles of Learning and Teaching :	0521	172	
Early Childhood	0522	161	Prior
Principles of Learning and Teaching: K-6	0523	154	to
Principles of Learning and Teaching: 5-9	0524	161	1/1/12
Principles of Learning and Teaching: 7-12			

B. Content and Pedagogy Requirements

Certification Area	Name of Praxis Test	Content Exam Score	Pedagogy: Principles of Learning & Teaching		
			PLT K-6 (#0622)	PLT 5-9 (#0623)	PLT 7-12 (#0624)
Early Childhood PK-3	Elementary Content Knowledge (0014)	147	Prior to 6/1/04: PLT K-6 or ECE 0020; After 5/31/04: Early Childhood Education 0020 (Score 510); After 12/31/07 PLT : Early Childhood 0521 (Score 172); After 12/31/11 PLT: Early Childhood 0621 (Score 157)		
	Prior to 5/31/04 Effective 6/1/04	150			
	Elementary Content Knowledge (0014) or (5014) Effective 10/12/10	150			
Grades 1-5	Elementary Content Knowledge (0014)	147	160	---	---
	Prior to 5/31/04 Effective 6/1/04	150			
	Elementary Content Knowledge (0014) or (5014) Effective 10/12/10	150			
Grades 4-8 Mathematics	Middle School Mathematics (0069)	148	---	160	---
Grades 4-8 Science	Middle School Science (0439)	140	---	160	---
	Prior to 5/31/2006 Effective 6/1/2006	145			
	Effective 6/1/2009	150			
Grades 4-8 Social Studies	Middle School Social Studies (0089)	149	---	160	---
Grades 4-8 English/ Language Arts	Middle School English/Language Arts (0049)	160	---	160	---

C. Certification Areas

1. Grades 6-12 Certification

Grades 6-12 Certification Areas						
			Score			PLT 7-12
Agriculture	Agriculture (0700)	Effective 7/1/05	510	---	---	157
Biology	Biology and General Science (0030)	Prior to 6/30/05	580	---	---	157
	Biology: Content Knowledge (0235)	Effective 7/1/05	150			
Business	Business Education (0100)	Prior to 5/31/04	540	---	---	157
		Effective 6/1/04	570			
	Business Education: Content Knowledge (0101)	Effective 9/18/10	154			
Chemistry	Chemistry/Physics/General Science (0070)	Prior to 6/30/06	530			157
	Chemistry: Content Knowledge (0245)	Effective 7/1/06	151			
English	English Language, Literature, and Composition: Content Knowledge (0041)		160			157
	Pedagogy (0043)		130	---	---	
Family & Consumer Sciences (formerly Home Economics)	Family and Consumer Sciences (0120)	Prior to 12/31/08	510	---	---	157
	Family and Consumer Sciences (0121)	Effective 1/1/09	141			
French	French (0170)	Prior to 5/31/04	520	PLT7-12 (Score 157) until 6/30/13; After 6/30/13 World Languages Pedagogy 0841 (Score 158)		
	French: Content Knowledge (0173)	Effective 6/1/04	156			
	French: World Language (5174)	Effective 10/15/10	157			
General Science	Biology and General Science (0030) –OR–		580	---	---	157
	Chemistry/Physics/General Science (0070) Prior to 6/30/05		530			
	General Science: Content Knowledge (0435) Effective 7/1/05		156			
German	German (0180)		500	PLT7-12 (Score 157) until 6/30/13; After 6/30/13 World Languages Pedagogy0841 (Score 158)		
	German: Content Knowledge (0181)	Effective 7/1/06	151			
	German: World Language (5183)	Effective 10/15/10	157			

Grades 6-12 Certification Areas						
			Score			PLT 7-12
Mathematics	Mathematics (0060)	Prior to 5/31/04	550	---	---	157
	Mathematics: Content Knowledge (0061)	Effective 6/1/04	125			
		Effective 6/1/07	130			
		Effective 6/1/10	135			
Physics	Chemistry/Physics/General Science (0070)	Prior to 6/30/06	530			157
	Physics: Content Knowledge (0265)	Effective 7/1/06	141			
School Librarian	Library Media Specialist (0310)	Prior to 9/11/09	560	---	---	---
	Library Media Specialist (0311)	Effective 9/12/09	136			
Social Studies	Social Studies: Content Knowledge (0081)		149	---	---	157
	Interpretation of Materials (0083)		152			
	Social Studies: Content and Interpretation (0086)	Effective 1/1/12	160			
Spanish	Spanish (0190)	Prior to 5/31/04	540	PLT7-12 (Score 157) until 6/30/13; After 6/30/13 World Languages Pedagogy0841 (Score 158)		
	Spanish: Content Knowledge (0191)	Effective 6/1/04	160			
	Spanish: World Language (5195)	Effective 10/15/10	157			
Speech	Speech Communications (0220)	Effective 7/1/05	575	---	---	157
	Speech Communications (0221)	Effective 9/12/09	146			
Technology Education (formerly Industrial Arts)	Technology Education (0050)	Effective 7/1/05	600	---	---	157
	Technology Education (0051)	Effective 1/1/12	159			
Computer Science Earth Science Environmental Science Journalism Latin Marketing (formerly Distributive Education)	At this time, a content area exam is not required for certification in Louisiana.		---	---	---	157

## 2. All-Level K-12 Certification

All-Level K-12 Certification Areas								
			Score	PLT K-6		PLT 5-9		PLT 7-12
Grades K-12 Art	Art: Content Knowledge (0133)	Effective 7/1/05	155	160	or	160	or	157
	Art: Content Knowledge (0134)	Effective 1/1/12	159					
Grades K-12 Dance	None Available**		---	160	or	160	or	157
Grades K-12 Foreign Languages	French (0170)	Prior to 5/31/04	520	PLT K-6 (Score 160) or PLT 5-9 (Score 160) or PL7-12 (Score 157) until 6/30/13; After 6/30/13 World Languages Pedagogy 0841 (Score 158)				
	French: Content Knowledge (0173)	Effective 6/1/04	156					
	French: World Languages (5174)	Effective 10/15/10	157					
	German (0180)		500					
	German: Content Knowledge (0181)		151					
	German: World Language (5183)	Effective 10/15/10	157					
Grades K-12 Music	Music Education (0110)	Prior to 5/31/04	530	160	or	160	or	157
	Music: Content Knowledge (0113)	Effective 6/1/04	151					
	Physical Education (0090)	Prior to 5/31/04	550					
Grades K-12 Health and Physical Education	Phys. Education: Content Knowledge (0091)		146	160	or	160	or	157

\*\*At this time, a content area exam is not required for certification in Louisiana.

D. Special Education Areas

Area	Content Exam	Score	Pedagogy Requirement	Score
All Special Education Area(s)			Prior to 6/1/04: PLT K-6 (161), PLT 5-9 (154) OR PLT 7-12 (161)	
Early Interventionist	Elementary Education: Content Knowledge (0014) Effective 7/1/05	150	Educ. of Exceptional Students: Core Content Knowledge (0353) Effective 6/1/04 Educ. of Exceptional Students: Core Content Knowledge (0353) and Early Childhood Education (0020) Effective 7/1/05	143 143 510
	Elementary Content Knowledge (0014) or (5014) Effective 10/12/10	150	Educ. of Exceptional Students: Core Content Knowledge (0353) and Principles of Learning and Teaching: Early Childhood (0521) Effective 1/1/08 Special Education: Core Knowledge and Applications (0354) and Principles of Learning and Teaching: Early Childhood (0521) Effective 1/1/11 Special Education Core Knowledge and Applications (0354) and Principles of Learning and Teaching: Early Childhood (0621) Effective 1/1/12	143 172 145 172 145 157
Hearing Impaired	Elementary Education: Content Knowledge (0014) Effective 7/1/05	150	Educ. of Exceptional Students: Core Content Knowledge (0353) and Educ. of Deaf and Hard of Hearing Students (0271) Effective 6/1/04	143 160
	Elementary Content Knowledge (0014) or (5014) Effective 10/12/10	150	Special Education: Core Knowledge and Application (0354) and Education of Deaf and Hard of Hearing Students (0271) Effective 1/1/11	145 160
Mild to Moderate Disabilities	Effective 6/1/04 ALL Candidates must pass a content area exam appropriate to certification level 1-5, 4-8, 6-12 (e.g., 0014, or core subject-specific exams for middle or secondary grades)		*Educ. of Exceptional Students: Core Content Knowledge (0353) and Educ. of Exceptional Students: Mild/Moderate Disabilities (0542) Effective 6/1/04	143 141
	Prior to 6/1/04, a content area exam was required only for entry into a Mild/ Moderate 1-12 Practitioner Teacher Program, Non-Master's Certification-Only Alternate Program, and Master's Alternate Program.		*Note: (0353) and (0542) are not content area exams. Special Education: Core Knowledge and Mild to Moderate Applications (0543) Effective 1/1/11	153
Significant Disabilities	Elementary Education: Content Knowledge (0014) Effective 7/1/05	150	Educ. of Exceptional Students: Core Content Knowledge (0353) and Educ. of Exceptional Students: Severe to Profound Disabilities (0544) Effective 6/1/04	143 147
	Elementary Content Knowledge (0014) or (5014) Effective 10/12/10	150	Special Education: Core Knowledge and Severe to Profound Applications (0545) Effective 1/1/11	153
Visual Impairments/Blind	Elementary Education: Content Knowledge (0014) Effective 7/1/05	150	Educ. of Exceptional Students: Core Content Knowledge (0353) Effective 6/1/04	143
	Elementary Content Knowledge (0014) or (5014) Effective 10/12/10	150	Special Education: Core Content Knowledge and Applications (0354) Effective 1/1/11	145

E. Administrative Areas

Certification Area	Name of Praxis Test	Area Test Score
Principal	Educational Leadership: Administration and Supervision (0410) Prior to 1/1/09	620
Educational Leader – Level 1	School Leaders Licensure Assessment (1010) Effective 7/1/06	168
	School Leaders Licensure Assessment (1011) Effective 1/1/10	166
Educational Leader – Level 3	School Superintendent Assessment (1020) Effective 7/1/06	154

All Praxis scores used for certification must be sent directly from ETS to the State Department of Education electronically, or the original Praxis score report from ETS must be submitted with candidate's application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1833 (October 2006), amended LR 36:485 and 488 (March 2010), LR 36:2265 (October 2010), LR 37:

**Chapter 6. Endorsements to Existing Certificates**  
**Subchapter A. Regular Education Level and Area**  
**Endorsements**

**§605. Requirements to add Early Childhood (Grades PK-3)**

A. Individuals holding a valid elementary certificate (e.g., 1-4, 1-5, 1-6, or 1-8) must achieve one of the following:

1. passing score for Praxis Principles of Learning and Teaching Early Childhood (#0621); or
2. 12 semester hours of combined nursery school and kindergarten coursework.

B. Individuals holding a valid upper elementary or middle school certificate (e.g., 4-8, 5-8, 6-8), secondary school certificate (e.g., 6-12, 7-12, 9-12), special education certificate (other than early interventionist), or an All-Level K-12 certificate (art, dance, foreign language, health, physical education, health and physical education, music) must achieve the following:

1. passing score for Praxis Elementary Education: Content Knowledge exam (#0014);
2. passing score for Praxis Principles of Learning and Teaching Early Childhood (#0621) OR accumulate 12 credit hours of combined nursery school and kindergarten coursework;
3. nine semester hours of reading coursework.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1815 (October 2006), amended LR 37:883 (March 2011), LR 37:

**Subchapter B. Special Education Level and Area**  
**Endorsements**

**§625. Requirements to add Early Interventionist Birth to Five Years**

A. Individuals holding a valid early childhood certificate (e.g., PK-K, PK-3), elementary certificate (e.g., 1-4, 1-5, 1-6, 1-8), upper elementary or middle school certificate (e.g., 4-8, 5-8, 6-8), secondary certificate (e.g., 6-12, 7-12, 9-12), special education certificate, or an all-level K-12 certificate (art, dance, foreign language, health, physical education, health and physical education, and music) must achieve the following:

1. passing score for Praxis exams: Principles of Learning and Teaching; Early Childhood (#0621) and Special Education: Core Content Knowledge and Applications (#0354);
2. 18 credit hours that pertain to infants, toddlers, and preschoolers, as follows:
  - a. foundations in early childhood education and early intervention;
  - b. understanding and working with families of young children;
  - c. assessment in early intervention;
  - d. early intervention methods;

e. teaming, physical and medical management in early intervention;

f. communication and literacy in early intervention;

3. nine semester hours of reading coursework.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1817 (October 2006), amended LR 37:552 (February 2011), amended LR 37:1382 (May 2011), LR 37:

**Family Impact Statement**

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? No

**Public Comments**

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., September 19, 2011, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak  
Executive Director

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

**RULE TITLE: Bulletin 746—Louisiana Standards  
for State Certification of School Personnel**

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

This revision of the Praxis examination policy would allow the replacement of the current Praxis exams in Art, Social Studies, Technology Education and the Principles of Learning and Teaching exams with new editions of the following Praxis exams: Art: Content Knowledge (0134), Social Studies: Content and Interpretation (0086), Technology Education (0051), Principles of Learning and Teaching: Early Childhood (0621) Principles of Learning and Teaching: K-6 (0622), Principles of Learning and Teaching: 5-9 (0623) and Principles of Learning and Teaching: 7-12 (0624) effective January 1, 2012. The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy.

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

This policy will have no effect on revenue collections.

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

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Beth Scioneaux  
Deputy Superintendent  
1108#035

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Bulletin 1922—Compliance Monitoring Procedures  
(LAC 28:XCI.Chapters 1-5)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 1922—Compliance Monitoring Procedures*: §101. Monitoring, §103. Authority, §107. Corrective Action and Sanctions, §109. Components of the Continuous Improvement Monitoring Process, §111. Purpose, §301. Categories of Monitoring, §303. Timelines, §305. On-Site Visits, §307. Regulatory Issues Reviewed On-Site, §309. Activities Conducted Prior to the On-Site Visit, §311. Activities Conducted During the On-Site Visit, §313. Activities/Procedures at the Completion of the On-Site Visit, §315. Validation of Corrective Action, §317. Self-Review Conducted at the Local Level, §501. Introduction, §503. On-Site Fiscal Reviews of Sub-recipients, §505. Verification of Compliance Applicable Laws and Regulations for Non-Supplanting, Maintenance of Effort, Excess Cost and Other Financial Information During the Award Period, §507. Verification of the Accuracy of the Child Count, and §509. Recovery of Funds for a Misclassified Child.

Bulletin 1922 represents the LDOE special education monitoring protocols that are in alignment with the monitoring requirements in the federal regulations. Changes were required in the state's IDEA Self-Review Monitoring Process following a verification visit by the Office of Special Education Programs from the U.S. Department of Education. The self review process is discussed in this bulletin and requested changes reflect the required changes and minor document revisions to reflect current practices. The revisions also include the federal law requirement that the public agency (LEA) must correct noncompliance within one year from notification of the finding.

Chapters 1 and 3 are revised to reflect the deletion of language related to the LDOE's receipt of self-review information from the local education agencies, as well as minor changes to delete duplication of information. Chapter 5: Fiscal Monitoring is deleted because the procedures for fiscal monitoring are presented in another document and are performed by personnel in the Fiscal/Budgets Office.

**Title 28  
EDUCATION**

**Part XCI. Bulletin 1922—Compliance Monitoring  
Procedures**

**Chapter 1. Overview**

**§101. Monitoring**

A. Monitoring is a process to ensure a free, appropriate, public education for all children with disabilities and to assess and ensure program effectiveness for all children with disabilities in public schools. This includes students with disabilities, ages 3-21.

B. The monitoring system for Louisiana, through the analysis of various quantitative and qualitative data, will focus state resources on improving educational program outcomes for students with disabilities through a comprehensive, data-based process. Annually, the Louisiana Department of Education (LDE) will select a list of specific variables and performance indicators for comparative purposes for all local educational agencies providing services to children with disabilities. This list is may be a combination of federally-required indicators, state performance indicators or goal areas.

C. The quantitative data will be used to determine specific performance profiles for local educational agencies (LEAs) using data relative to a set of variables referenced in 101B. Performance profiles will be issued annually. The quantitative data will be collected in relation to a set of variables selected by a statewide group of stakeholders from various agencies and entities called the Continuous Improvement Monitoring Process (CIMP) Steering Committee. This group will meet at least annually with the Louisiana Department of Education (LDE) to select only specific indicators that will be used to determine a LEA's performance status.

D. - D.1. ...

2. The LEAs designated as continuous improvement will not be targeted to receive an on-site compliance visit. Some districts may be required to develop a corrective action plan because of triggers within the data that signify concerns such as when the performance of students with disabilities is disproportionately below the state average in any of the required performance indicators. These performance indicators include, but are not limited to suspension, diploma, dropout, and state-wide assessment rates.

3. When critical issues of noncompliance are identified by means other than the performance profiles (including, but not limited to complaint logs, evaluation extension requests, and financial risk assessments), a targeted on-site compliance monitoring visit of the LEA may be required by the LDE.

E. Embodied in this process are proactive measures of self-evaluation, support, and technical assistance to ensure compliance with all regulatory requirements at the federal and state levels. Findings from data analysis, as well as findings from the on-site compliance visit, will be used to determine and allocate various resources for technical assistance and support to the LEA by the LDE.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30.414 (March 2004), amended LR 31:3104 (December 2005), LR 37:

### **§103. Authority**

A. - E. ...

F. Regulations for Implementation of the Children with Exceptionalities Act, R.S.17:1941 et seq., Bulletin 1706: Subpart 1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:415 (March 2004), LR 37:

### **§107. Corrective Action and Sanctions**

A. The LDE has the responsibility to monitor all public educational agencies with programs for children with disabilities within the state for compliance with applicable state and federal laws, regulations, and standards.

B. The LDE is authorized to take actions, consistent with applicable law, necessary to ensure compliance. Failure on the part of a participating agency to comply may result in the LDE, with the approval of its governing authority, the Board of Elementary and Secondary Education, withholding funds from the said agency. Prior to withholding any funds under this Section, the LDE shall provide reasonable notice and an opportunity for a hearing conducted by the State Board of Elementary and Secondary Education (BESE) to the LEA involved.

C. LDE determines the need for a corrective action plan (CAP) to address findings of non-compliance on an individual LEA case-by-case basis. If the LDE requires a CAP, it will be developed in collaboration with the LDE following the LEA's receipt of the LDE's monitoring report. The CAP shall be submitted for approval to the LDE within 35 business days of receipt of the monitoring report for However, upon receipt of the report, the LEA shall immediately begin correcting the findings of non-compliance documented in the report. The plan will address the activities the LEA will implement to correct the areas of non-compliance identified during the on-site visit. as soon as possible, but in no case more than one year from the date of the notification report from the LDE.

D. The progress toward completing the activities in the plan will be tracked by the LDE to determine if the timelines are being met. LEAs will submit evidence and data as requested by the LDE to show completion of activities and evidence of change in the LEA as a result of the corrective action plan. Based on a review of submitted evidence, the LDE will decide whether the LEA has met compliance requirements or determine whether a follow-up, on-site visit must be conducted to determine if the LEA has made systemic changes to correct the noncompliance addressed in the corrective action plan.

E. A written report of the findings from a review of the submitted evidence or from a follow-up visit will be issued to the LEA by the LDE within 30 business days of the review of the evidence or the on-site visit.

F. When continuing non-compliance is identified, the LDOE will require that an Intensive Corrective Action Plan (ICAP) be developed by the LEA in collaboration with the department, to address the continuing noncompliance. In conjunction with the implementation of the approved plan,

the department will impose one or more of the following sanctions described below.

1. Advise the LEA of available sources of technical assistance that may help the LEA.

2. Direct the LEA to present the ICAP to the local school board for approval.

3. Direct the LEA to use IDEA Part B flow-through funds on the area or areas that the LEA is non-compliant. The LEA will submit evidence to the department of the specific funds targeted for areas of non-compliance. The department will monitor the expenditure of such funds on a consistent basis.

4. The LDE may determine that a special consultant or management team is necessary to assist the LEA in addressing areas of non-compliance. The LDE will select a special consultant or management team to collaborate with the LEA in developing and implementing an intensive corrective action plan. The special consultant and the ICAP activities must be approved by the local board and will be funded at the local level.

5. Identify the LEA as a high-risk grantee and impose special conditions on the LEA's IDEA Part B grant. The department will impose one or more of the following special conditions.

a. For each year of continuing non-compliance, withhold not less than 20 percent and not more than 50 percent of the LEA's IDEA Part B grant until the department determines the LEA has sufficiently addressed the areas in which the LEA needs intervention.

b. Seek to recover funds under section 452 of the General Education Provisions Act.

c. Withhold, in whole or in part, any further payments to the LEA under this part pursuant to Subparagraph a.

d. Refer the matter for other appropriate enforcement action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:415 (March 2004), amended LR 31:3105 (December 2005), LR 32:1839 (October 2006), LR 37:

### **§109. Components of the Continuous Improvement Monitoring Process**

A. ...

B. The monitoring system may incorporate and utilize strategies and components as listed below.

1. Analyze current data elements and databases that are captured by the LDE and are directly related to student outcomes.

2. Analyze the LEA grant application to track and monitor the allocation and use of Part B funds targeted to address priorities revealed through previous data sources in the monitoring process, as well as policy and procedural assurances.

3. Review complaint management logs regarding specific complaints in individual LEA.

4. Analyze Extended School Year Program data.

5. Analyze district and school accountability profiles.

6. Analyze FAPE tables and other mandated federal data reporting (i.e., e.g. personnel tables, child count data).

7. Analyze Pupil Progression Assurances/Reviews.



8. Review the personnel files related to certification, experience and training documentation.

9. Track corrective action on areas of non-compliance and validate previous corrective action reviews, documentation, and on-site reviews.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:418 (March 2004), amended LR 31:3107 (December 2005), LR 32:1840 (October 2006), LR 37:

### **§111. Purpose**

A. The LDE has the responsibility to ensure that each participating agency in the state is in compliance with all applicable federal and state laws, regulations and standards required for the provision of a free and appropriate public education for all children with disabilities for whom each is legally responsible. To fulfill this responsibility, the LDE has established a purpose for conducting monitoring, as well as procedures and strategies that provide ongoing monitoring activities. The procedures provide continuous and comprehensive monitoring of all aspects of special education including the following:

1. - 3. ...

4. program, services, and placement implementation for students with disabilities three through twenty-one years of age; including transition from Part C by the child's third birthday;

5. professional development; and

6. fiscal requirements relative to programmatic issues of local educational agencies.

B. - B.3. ...

C. The information obtained as a result of the monitoring process will be utilized in the following ways:

1. to improve outcomes for all children with disabilities;

2. - 3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:416 (March 2004), amended LR 31:3106 (December 2005), LR 37:

## **Chapter 3. Operational Procedures for Compliance Monitoring**

### **§301. Categories of Monitoring**

A. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:417 (March 2004), amended LR 31:3106 (December 2005), LR 37:

### **§303. Timelines**

A. A schedule of on-site visits will be issued to LEAs by September of each year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:417 (March 2004), amended LR 31:3106 (December 2005), LR 37:

### **§305. On-Site Visits**

A. ...

B. Non-employees selected to serve as team members will be initially required to receive a minimum of eight hours of professional development specific to conducting

on-site monitoring, conducted by the LDE. In addition, team leaders, serving in coordination with staff team leaders, will be required to receive 24 hours of professional development specific to leadership, investigative techniques for specific regulatory areas, and assimilating data for report writing conducted by the LDE, with follow-up training as necessary as determined by the state monitoring coordinator. Participants will receive a certificate that indicates their completion of the required professional development activity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:417 (March 2004), amended LR 31:3106 (December 2005), LR 37:

### **§307. Regulatory Issues Reviewed On-Site**

A. For focus category LEAs, the regulatory issues, qualitative and quantitative indicators reviewed will be specific to the variables targeted in the LEA's performance profile. These visits will focus on selected issues. In the event that other critical issues or triggers are identified by means other than the performance profiles, the LDE will direct the team to monitor those issues for non-compliance. These other means may include, but are not limited to, complaint logs, evaluation extension requests, and financial risk assessments.

B. The LDE will reserve the right to direct the team to review any and all regulatory issues that indicate non-compliance status in a LEA.

C. Data for the following major regulatory issues may be analyzed, reviewed, and utilized in the on-site monitoring process:

1. child identification;
2. individual evaluation;
3. IEP development;
4. provision of a free, appropriate, public education;
5. participation in statewide assessment;
6. transition at different programming levels;
7. placement in the least restrictive environment;
8. professional development and personnel standards;
9. program comparability (ASR);
10. facility accessibility and comparability;
11. procedural safeguards;
12. extended school year programming; and
13. discipline procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:417 (March 2004), amended LR 31:3107 (December 2005), LR 37:

### **§309. Activities Conducted Prior to the On-Site Visit**

A. ...

1. performance profiles;
2. LEA Application for IDEA Part B funds;
3. complaint logs and due process hearings relative to the LEA;
4. files/logs indicative of technical assistance provided to the LEA by the LDE;
5. information relative to the state's accountability system which is school-site specific;
6. school improvement plans;
7. data relative to statewide assessment for participation and performance;
8. data derived from the district composite reports;

9. information relative to certifications and professional development activities provided to personnel and parents; and

10. any other data the LDE determines is necessary to review as part of a comprehensive data review of the LEA.

B. The LEA supervisor/director of special education will be contacted, if necessary, for clarification of any concerns regarding the data. The data analysis will determine the locations within the LEA to be visited, the number and types of records to be reviewed, the methods (e.g. interviews, record review, and classroom observations) that will be used for validation of qualitative issues during on-site visits, and the composition of the monitoring team.

C. - C.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:418 (March 2004), amended LR 31:3107 (December 2005), LR 37:

### **§311. Activities Conducted During the On-Site Visit**

A. - B. ...

C. Team members will visit sites, make observations, review records, and interview personnel.

D. The team leader will meet with the LEA special education director to review administrative issues. Additional data/information may be requested if further analysis is required for determining compliance status for specific regulatory issues.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:418 (March 2004), amended LR 31:3107 (December 2005), LR 37:

### **§313. Activities/Procedures at the Completion of the On-Site Visit**

A. - C. ...

D. Upon receipt of the report, the LEA will have 20 business days from the date of receipt of the report to respond to any findings, and 15 additional business days to develop a plan of corrective action to address findings of non-compliance described in the summary.

E. The LEA, in collaboration with the LDE, will be required to design a corrective action plan that defines specific supports and resources that the LEA must have in order to implement the corrective action plan. The CAP must demonstrate how the LEA will:

1. correct each individual case of noncompliance
2. correctly implement the specific regulatory requirement

F. Timelines must be developed that are specific to the corrective action required and to the issues of noncompliance. The LEA must return the report to the LDE in hard copy and electronically. The timeline must indicate how the findings will be corrected as soon as possible, but in no case more than one year from identification by the LDE.

G. ...

H. If there is no responses from the LEA within the established timelines, the state director of special education will, notify the state superintendent of education.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:418 (March 2004), amended LR 31:3107 (December 2005), LR 37:

### **§315. Validation of Corrective Action**

A. Upon receipt of the approved Corrective Action Plan (CAP) the LEA must begin to submit documentation of completed activities from the CAP agreed upon by the LEA and the LDE.

B. ...

C. All corrective action must be completed in accordance with the timelines that relate to each specific area of non-compliance. Documentation must be submitted to the LDE within the required timelines.

D. The LDE will conduct, when necessary, an on-site visit in the year following the initial on-site visit, or sooner if deemed necessary by the LDE, to validate the documentation of the implementation of the corrective action and to validate systemic change of areas of non-compliance. Validation of correction requires verification that the LEA has corrected each individual case of noncompliance and the LEA is correctly implementing the specific regulatory requirement.

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:419 (March 2004), amended LR 31:3108 (December 2005), LR 37:

### **§317. Self-Review Conducted at the Local Level**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:419 (March 2004), amended LR 31:3108 (December 2005), repealed LR 37:

## **Chapter 5. Fiscal Monitoring**

### **§501. Introduction**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:419 (March 2004), repealed 37:

### **§503. On-Site Fiscal Reviews of Subrecipients**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:420 (March 2004), repealed LR 37:

### **§505. Verification of Compliance Applicable Laws and Regulations for Non-Supplanting, Maintenance of Effort, Excess Cost and Other Financial Information During the Award Period**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:420 (March 2004), repealed LR 37:

### **§507. Verification of the Accuracy of the Child Count**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:420 (March 2004), amended LR 31:3108 (December 2005), repealed LR 37:

**§509. Recovery of Funds for a Misclassified Child**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:421 (March 2004), amended LR 31:3109 (December 2005), repealed LR 37:

**Family Impact Statement**

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

**Public Comments**

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., September 19, 2011, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak  
Executive Director

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

**RULE TITLE: Bulletin 1922—Compliance Monitoring Procedures**

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

There are no estimated implementation costs or savings to state or local governmental units. The additional language and other revisions are current practice. The removal of the fiscal monitoring section does not save or cost funds because this monitoring is carried out as a component of fiscal monitoring of all Local Education Agencies (LEAs).

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

There is no estimated effect on revenue collections of state or local governmental units. The Louisiana Department of Education (LDOE) nor the LEAs collect revenue for compliance monitoring to determine compliance with the Individuals with Disabilities Education Act (IDEA).

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

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups. The LDOE will continue to provide oversight and monitoring of LEAs and there will not be additional costs associated with the proposed rule revisions.

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

There is no estimated effect on competition and employment. Current LDOE employees and contracted professionals will continue to conduct compliance monitoring.

Beth Scioneaux  
Deputy Superintendent  
1108#036

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Minimum Foundation Program  
Student Membership Definition (LAC 28:I.1107)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education approved for advertisement revisions to the *Louisiana Administrative Code*, Title 28, Part I, §1107.C. MFP: Student Membership Definition. Changes are being made to add the New Orleans Center for Creative Arts (NOCCA) and the Louisiana School for Math, Science and the Arts (LSMSA) to the list of schools included in the membership definition. The changes bring the definition in line with the provisions of the Minimum Foundation Program resolution.

**Title 28  
EDUCATION**

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

**Chapter 11. Finance and Property**

**§1107. Minimum Foundation Program**

A. - B.1. ...

C. MFP: Student Membership Definition

1. Definition. For state reporting for public education for the purpose of establishing the base student count for state funding, each parish/city and other local school system, recovery school district school, LSU and Southern Lab school, Office of Juvenile Justice school, New Orleans Center for Creative Arts (NOCCA), and Louisiana School for Math, Science, and the Arts (LSMSA) shall adhere to the following.

C.1.a. - D.1.e. ...

AUTHORITY NOTE: Promulgated in accordance with Art. VIII §13 and R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:425 (March 2008), amended LR 37:1142 (April 2011), LR 37:

**Family Impact Statement**

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No
2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No
3. Will the proposed Rule affect the functioning of the family? No

4. Will the proposed Rule affect family earnings and family budget? No

5. Will the proposed Rule affect the behavior and personal responsibility of children? No

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes

#### Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., September 19, 2011, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak  
Executive Director

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: Minimum Foundation Program Student Membership Definition

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Louisiana Administrative Code, Title 28, Part I, Section 1107.C. contains the Minimum Foundation Program (MFP) Student Membership Definition. Changes are being made to add the New Orleans Center for Creative Arts (NOCCA) and the Louisiana School for Math, Science, and the Arts (LSMSA) to the list of schools included in the membership definition. The cost of the MFP formula will increase as a result of adding these students to the membership definition. In FY 11-12, the cost of the MFP will increase by \$1,993,853 to include these students, however, a like amount has been reduced from NOCCA and LSMSA's direct appropriation. Therefore, this action will have no statewide fiscal effect other than an estimated cost of \$165 for advertising in the Louisiana Register.

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

This action will have no effect on revenue collections of state and local government units.

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

This action will have no effect on cost and/or economic benefits to directly affected persons or nongovernmental groups.

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

This action will have no effect on competition and employment.

Catherine Pozniak  
Executive Director  
1108#037

Gregory V. Albrecht  
Chief Economist  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Board of Elementary and Secondary Education

Regulatory Documents—Rulemaking (LAC 28:I.1303)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education approved for advertisement revisions to the *Louisiana Administrative Code*, Title 28, Part I, Chapter 13.

Regulatory Documents, Section 1303. Rulemaking. After the BESE staff was asked to determine ways to shorten the process of adopting new and revised policy, it was determined that Rules may be submitted to the *Louisiana Register* for advertisement in the month in which the 90-day required advertisement period expires, which would not violate requirements of the Administrative Procedure Act. The changes to *Louisiana Administrative Code*, Title 28, Part I, Section 1303, Rulemaking, reflect that determination.

#### Title 28

#### EDUCATION

#### Part I. Board of Elementary and Secondary Education Chapter 13. Regulatory Documents §1303. Rulemaking

A. - B. ...

C. The following process must be followed for adoption of all rules:

1. The board approves a proposed rule to be advertised as a Notice of Intent. The Notice of Intent approval will serve as authorization for the BESE Executive Director to submit the Notice of Intent to the Louisiana Register for final adoption as a Rule at the expiration of the required 90-day advertisement period, if no public comments are received relevant to said Notice of Intent. If comments are received regarding the Notice of Intent, the comments will be considered by the Board prior to final adoption as a Rule (refer to 2.e. through 2.f.ii. below).

2. - 2.c....

d. Upon publication of the Notice of Intent in the *Louisiana Register*, a period of 90 days must elapse before the Notice of Intent can be adopted as a Rule.

e. Any public comments received during the comment period are forwarded to the LDE/board office, to the appropriate BESE committee, and to the appropriate legislative committees for consideration.

f. - f.ii. ...

C.3. The deadline for submission of information for publication of Notices of Intent or Rules in the *Louisiana Register* is the 10th of the month.

D. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 49:951 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:426 (March 2008); amended LR 37:

#### Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No

3. Will the proposed Rule affect the functioning of the family? No

4. Will the proposed Rule affect family earnings and family budget? No

5. Will the proposed Rule affect the behavior and personal responsibility of children? No

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes

#### Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., September 19, 2011, to: Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak  
Executive Director

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: Regulatory Documents—Rulemaking

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Louisiana Administrative Code, Title 28, Part I, Section 1303 contains the Rulemaking procedure for the Board of Elementary and Secondary Education (BESE). Changes are being made to reflect that rules may be submitted to the Louisiana Register for advertisement in the month in which the 90-day required advertisement expires. This action will have no fiscal effect other than an estimated cost of \$165 in the *Louisiana Register*.

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

This action will have no effect on revenue collections of state and local government units.

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

This action will have no effect on cost and/or economic benefits to directly affected persons or nongovernmental groups.

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

This action will have no effect on competition and employment.

Catherine Pozniak  
Executive Director  
1108#038

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Department of Environmental Quality Office of the Secretary

Permit Term or Condition Referencing  
40 CFR Part 63, Subpart DDDD  
(LAC 33:III.501)(AQ323)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.501.B.8 (AQ323).

On September 13, 2004, EPA promulgated 40 CFR 63, Subpart DDDDD—National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters (69 FR 55253).

Subpart DDDDD was subsequently vacated and remanded to EPA by the U.S. Court of Appeals for the District of Columbia Circuit on June 8, 2007. The Court made its ruling effective on July 30, 2007.

Prior to the Court's ruling, LDEQ had incorporated the provisions of Subpart DDDDD into numerous Part 70 Operating Permits. Therefore, LDEQ promulgated LAC 33:III.501.B.8 to specify that "any term or condition in a permit that references 40 CFR Part 63, Subpart DDDDD shall be null and unenforceable."

In response to the Court's vacatur and remand, EPA re-promulgated Subpart DDDDD on March 21, 2011 (76 FR 15608). Because provisions of the final Rule must be incorporated into certain Part 70 permits as "applicable requirements" per 40 CFR 70.6(a), LAC 33:III.501.B.8 must be repealed. The basis and rational for this Rule are to repeal and reserve LAC 33:III.501.B.8. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

### Title 33

### ENVIRONMENTAL QUALITY

#### Part III. Air

#### Chapter 5. Permit Procedures

#### §501. Scope and Applicability

A. - B.7. . . .

8. Repealed.

C. - C.14. . . .

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011 and 2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:613 (July 1990), LR 17:478 (May 1991), LR 19:1420 (November 1993), LR 20:1281 (November 1994), LR 20:1375 (December 1994), LR 23:1677 (December 1997), amended by the Office of the Secretary, LR 25:660 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 28:997 (May 2002), amended by the Office of Environmental Assessment, LR 31:1063 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2436 (October 2005), LR 32:1842 (October 2006), LR 33:2082 (October 2007), LR 33:2626 (December 2007), LR 35:461 (March 2009), LR 35:2351 (November 2009), LR 37:

#### Family Impact Statement

This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

#### Public Comments

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ323. Such comments must be received no later than October 4, 2011, at 4:30 p.m., and should be sent to Perry Theriot, Attorney Supervisor, Office of the Secretary, Legal Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to perry.theriot@la.gov. Copies of these proposed regulations can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ323. These proposed regulations are available on the Internet at [www.deq.louisiana.gov/portal/tabid/1669/default.aspx](http://www.deq.louisiana.gov/portal/tabid/1669/default.aspx).

## Public Hearing

A public hearing will be held on September 27, 2011, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Perry Theriot at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

These proposed regulations are available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson, CPM  
Executive Counsel

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Permit Term or Condition Referencing 40 CFR Part 63, Subpart DDDD**

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

The proposed rule change will have no impact on state or local government expenditures. The proposed rule change is a technical amendment that eliminates the current regulation pertaining to permit terms or conditions impacting boilers and process heaters at major sources of hazardous air pollutants. The rule was promulgated in response to the U.S. Court of Appeals for the District of Columbia Circuit ruling that declared 40 CFR 6, subpart DDDDD null and void. In response to the ruling, the Environmental Protection Agency re-promulgated federal standards for these sources. The Department of Environmental Quality still monitors major sources with boilers and process heaters, as each is required to conform to the new Federal rule.

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

There is no estimated effect on revenue collections of state or local governmental units as a result of the proposed rule change.

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

There will be no costs and/or economic benefits to directly affected persons or non-governmental groups as a result of the proposed rule change. The boilers located at major sources of hazardous air pollutants will still have to comply with the new Federal rule.

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

There is no estimated effect on competition or employment in the public or private sector because of the proposed rule change.

Herman Robinson, CPM  
Executive Counsel  
1108#045

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### **Office of the Governor Motor Vehicle Commission**

Automotive Industry  
(LAC 46:V.Chapters 1, 13, 15 and 18)

In accordance with the provisions of the Administrative Procedures Act R.S. 49:950 et seq., and in accordance with Revised Statutes Title 32, Chapter 6, the Office of the Governor, Louisiana Motor Vehicle Commission, notice is hereby given that the Louisiana Motor Vehicle Commission finds it necessary to adopt paragraph B of §107 to further implement the provisions of R.S. 32:1268.2. In the country's current economic condition, manufacturers of motor vehicles and recreational products are filing for bankruptcy, discontinuing lines, and ceasing to do business at an alarming rate making it unlawful under state law for dealers to sell their new inventory. R. S. 32: 1268.2 was enacted by the legislature to allow previously franchised motor vehicle and recreational product dealers to continue to be licensed under circumstances where the manufacturer is in bankruptcy, is no longer in business, or has terminated a line. This Rule will allow the commission to license the terminated dealer to perform warranty work under an agreement with the manufacturer when a line has been terminated. This will assure the consuming public the availability of a dealer to perform warranty on a terminated vehicle.

The commission proposes to adopt §1307 to place in its Rules its previously adopted policy regarding offsite displays by manufacturers, distributors, factory and distributor branches and new motor vehicle dealer licensees. This regulation has been in effect since 2004 and makes no change that will affect those persons covered by the Rule.

The commission proposes to repeal provisions of its rules relating to recreational product shows and replace them with existing and new regulations and language to clarify the Rule.

Rules will be adopted to implement the provisions of R.S. 32:1256 with regard to recreational product shows. Chapter 18. Recreational Products Trade Show; Definitions, License Fees and Applications; Violations and Regulations will be repealed. Chapter 15. Recreational Product Shows is being adopted with language to clarify the rules and put into the rule customary procedures of the commission which will assist licensees in dealing with the regulatory scheme assigned the commission. This Rule will eliminate provisions for local and regional shows and provides for a recreational product show. The fee for the show, \$500, is the fee that has been charged for a regional show under repealed Chapter 18. The provisions for a non-resident exhibitor have not been included as the reference to non-resident exhibitors has been deleted from Title 32, Chapter 6. In addition only a licensee of the commission may offer for sale recreational products in this state. The provisions of former §1806 regarding offsite displays of marine products have been expanded to include all recreational products. A fee of \$200 is established to cover the cost to approve and inspect the offsite displays. The Rule clarifies the requirement for invitations and priority of those invitations to participate in the recreational product show. The amendment clarifies the

requirements for a licensee to participate in closed or open rallies.

#### **Title 46**

### **PROFESSIONAL AND OCCUPATIONAL STANDARDS**

#### **Part V. Automotive Industry**

##### **Subpart 1. Motor Vehicle Commission**

##### **Chapter 1. General Requirements**

##### **§107. Manufacturer Termination of Franchise**

###### **Liquidation of New Vehicle Inventory; Warranty Work; Exception**

A. - A.5 ...

B. At the termination of the franchise the license issued by the commission may remain in effect or be renewed at the discretion of the executive director as a service center to perform warranty repairs on the vehicle under the following circumstances.

1. The dealer shall remain a dealer licensed by the commission.

2. The manufacturer, distributor or factory branch must enter into an agreement authorizing the dealer to perform warranty repairs on the terminated vehicle which agreement will comply with all provisions of R.S. 32:1251 et seq. and the rules and regulations adopted pursuant to this Chapter with regard to warranty work. The agreement must be approved upon execution and annually upon renewal of the dealer's license by the commission.

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

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

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Motor Vehicle Commission, LR 36:1547 (July 2010), amended LR 37:

##### **Chapter 13. New Motor Vehicle Auto Shows; Offsite Displays**

##### **§1307. Static Offsite Displays**

A. The executive director must approve all offsite displays of motor vehicles. A licensee's request to display vehicles at an offsite location must be received by the commission seven days prior to the commencement of the display.

B. The location of each display must be within the licensee's defined area of responsibility for the make and model to be displayed, if applicable.

C. Each offsite display will be limited to 30 days, unless the licensee submits a copy of the contract for the location of the offsite display and then the display will be limited to the length of the contract up to a six month period. There will not be a limit on the number of offsite displays allowed per year, per licensee.

D. The number of vehicles at any offsite display will be left to the discretion of the executive director, with a maximum of six vehicles per licensee, per display.

E. The presence of any sales personnel, business cards, brochures, pricing sheets, or any other point of sale device is strictly prohibited. The only pricing information allowed on any vehicle(s) displayed will be the Maroney label which is required by federal law.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Motor Vehicle Commission, LR 37:

##### **Chapter 15. Recreational Product Shows**

##### **§1501. Authorization for Recreational Product Show**

A. The commission may authorize or prohibit recreational product shows at offsite locations.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Motor Vehicle Commission, LR 37:

##### **§1503. Definitions**

*Promoter*—any person who alone or with others assumes the financial responsibility of a recreational product show in which recreational products are displayed by licensed dealers, manufacturers or distributors.

*Rally*—an event held and organized by recreational product clubs of specific product owners or manufacturers of specific products where owners of the specific products are members of the club and are invited to participate in the event.

*Recreational Product Show*—a controlled event in which a promoter charges or barter for booth space and/or charges spectator entrance in which 3 or more recreational product dealers exhibit vehicles.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Motor Vehicle Commission, LR 37:

##### **§1505. Promoter License Fee and Application**

A. A promoter shall obtain a license from the commission and its request for a license shall consist of the following:

1. the application for license shall be on forms prescribed by the commission and shall require such information as the commission deems necessary to enable it to determine the qualifications and eligibility of the applicant;

2. a license fee of \$100;

3. a promoter's license shall expire on December 31.

B. All applications to the commission for display permits not received within 30 days of that start of the trade show or exposition shall be charged a \$50 late processing fee.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Motor Vehicle Commission, LR 37:

##### **§1507. License Application for Recreational Product Show**

A. The promoter of a recreational product show shall be required to obtain a license for the show from the commission and its request for a license shall consist of the following:

1. the application shall be on a form prescribed by the commission and shall require such information as the commission deems necessary to enable it to determine the qualifications and eligibility of the applicant;

2. a license fee of \$500;

3. the license shall be for the recreational product show subject of the application.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Motor Vehicle Commission, LR 37:

#### **§1509. Recreational Product Show Requirements**

A. The application must be submitted to the commission no less than 60 days prior to the opening date of the recreational product show.

B. Only licensed recreational product dealers whose area of responsibility includes the show site may display and conduct sales of recreational products at recreational product shows.

C. All licensed recreational product dealers within 30 miles of the recreational product show's location must be offered the opportunity to participate in the show.

D. Each respective manufacturer shall grant authority to the dealers participating in the recreational product show.

E. Not less than 30 days prior to the opening day of the recreational product show the commission must receive a list of all participating recreational product dealers together with the consent of each respective manufacturer.

F. Participation by a recreational product dealer shall include display of vehicles and presence of dealer personnel.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Motor Vehicle Commission, LR 37:

#### **§1511. Invitations and Priority**

The promoter shall contact and invite potential participants to a recreational products show as follows.

1. The promoter shall first contact all recreational product dealers who sell the type of vehicle to be displayed at the recreational product show whose location is within a 30 mile radius of the show. Only dealers whose area of responsibility includes the show site may display the particular make of recreational products sold by them.

2. The promoter may invite, but shall accept any request from a recreational product dealer, not excluded by Paragraph 1 of this Section, above, whose business is conducted beyond the 30 mile radius whose area of responsibility includes the show site.

3. If a recreational products trade show is being held in a location where a recreational product does not have a dealer whose area of responsibility includes the show's location it shall be the manufacturer's responsibility to determine which licensee will represent that manufacturer at the show. If the manufacturer has not assigned a dealer to represent their product at a show, then the dealer that is the closest proximity to the show location shall determine which dealer has the first right of refusal to participate in a show based upon the shortest land based route.

4. The promoter shall maintain all records of invited, participating and declining dealers and shall furnish these records to the commission ten days prior to the opening of the recreational products show.

5. A recreational vehicle manufacturer or distributor may exhibit its recreational products at a show only through a recreational products dealer.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Motor Vehicle Commission, LR 37:

#### **§1513. Off-Site Expositions of Recreational Products**

A. The executive director must approve all off-site expositions by licensed recreational products dealers. A request for an off-site exposition, accompanied by a fee of \$200, must be received and approved by the executive director ten days prior to the commencement of the exposition. Any application received after that date shall be charged a \$50 late fee.

B. The location of any off-site exposition must be within the dealer's area of responsibility.

C. An off-site exposition of recreational products is limited to a single dealer and shall not exceed nine days.

D. A recreational products dealer may have only four off-site expositions per calendar year and at the same location only once each six months.

E. The number of vehicles at any off-site exposition of recreational products will be left to the discretion of the executive director, with a maximum of 20 vehicles.

F. The presence of any sales personnel, business cards, brochures, pricing sheets and other points of sales devices will be allowed to answer consumer questions. However, recreational products cannot be delivered from the off-site exposition location.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Motor Vehicle Commission, LR 37:

#### **§1515. Licensee Participation in a Rally**

A. Closed Rally

1. A closed rally is conducted and limited to a single product line.

2. A closed rally shall be subject to the provisions of §1513 of this Chapter.

B. Open Rally

1. An open rally is conducted with multiple product lines invited to participate.

2. An open rally is subject to all provisions of this Chapter related to recreational product shows.

### **Chapter 18. Recreational Products Trade Show; Definitions, License Fees and Applications; Violations and Regulation**

#### **§1801. Definitions**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32: 783(F)(7).

HISTORICAL NOTE: Promulgated by the office of the Governor, Recreational and Used Motor Vehicle Commission, LR 34:435 (March 2008), repromulgated by the Office of the Governor, Motor Vehicle Commission, LR 35:1525 (August 2009), repealed LR 37:

#### **§1802. License Fees and Applications**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:783(F)(7).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Recreational and Used Motor Vehicle Commission LR 34:436 (March 2008), repromulgated by the Office of the



Governor, Motor Vehicle Commission, LR 35:1526 (August 2009), repealed LR 37:

### **§1803. Order of Preference and Priority**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 783 (F)(7).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 34:436 (March 2008), repromulgated by the Office of the Governor, Motor Vehicle Commission, LR 35:1526 (August 2009), repealed 37:

### **§1804. Violations**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:783(F)(7).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 34:436 (March 2008), repromulgated by the Office of the Governor, Motor Vehicle Commission, LR 35:1526 (August 2009), repealed LR 37:

### **§1805. Miscellaneous Provisions; Enforcement**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:783(F)(7).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 34:437 (March 2008), repromulgated by the Office of the Governor, Motor Vehicle Commission, LR 35:1527 (August 2009), repealed LR 37:

### **§1806. Off-Site Displays—Marine Products**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:783.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 34:437 (March 2008), repromulgated by the Office of the Governor, Motor Vehicle Commission, LR 35:1527 (August 2009), repealed LR 37:

#### **Family Impact Statement**

1. What effect will this Rule have on the stability of the family? The proposed Rule should have a positive effect on the stability of the family.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? The proposed Rule will not affect the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this have on the functioning of the family? This Rule will have no effect on the functioning of the family.

4. What effect will this have on family earnings and family budget? The proposed Rule will not affect the family earnings or family budget.

5. What effect will this have on the behavior and personal responsibility of children? This proposed Rule will not affect the behavior or personal responsibility of children.

6. What effect will this have on the ability of the family or local government to perform the function as contained in this proposed Rule? This proposed Rule is designed to help the family to obtain the information and help needed to own their own automobile.

#### **Small Business Statement**

It is anticipated that the proposed Rule will not have a significant adverse impact on small businesses as defined in the Regulatory Flexibility Act. The agency, consistent with

health, safety, environmental and economic factors has considered and, where possible, utilized regulatory methods in drafting the proposed Rule to accomplish the objectives of applicable statutes while minimizing any anticipated adverse impact on small businesses.

#### **Public Comments**

Any person may submit data, views or positions, orally or in writing to the Louisiana Motor Vehicle Commission, 3519 12th Street, Metairie, LA 70002 or by telephoning at 504-838-5207 and facsimile 504-838-5416.

Lessie A. House  
Executive Director

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

### **RULE TITLE: Automotive Industry**

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

No implementation costs or savings to state or local governmental units is anticipated as a result of the proposed rules. The proposal eliminates Chapter 18 and establishes a new chapter 15. Chapter 18 provided separate rules and a different fee amount for local versus regional recreational product shows. Chapter 15 provides one rule that covers all recreational product shows. The proposal deletes provisions regarding non-resident exhibitor, and limits the sale of recreational products in the state to businesses that are licensed by the Louisiana Motor Vehicle commission. The provision regarding offsite displays that currently apply to marine products is being expanded to include all recreation products, and includes to establishment of a \$200 inspection and application fee. The proposed rule will also allow the commission to license a dealer to perform warranty work under an agreement with the manufacturer when a product line has been terminated, to assure the availability of a dealer to perform warranty work on a terminated product line. The proposed rule codifies existing practices regarding new motor vehicle auto show offsite displays.

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

Implementation of the proposed rule is anticipated to result in a \$7,000 annual increase in self-generated revenues. No increase in local government revenues is anticipated. A \$3,000 increase is anticipated to result from a \$400 fee increase for businesses that previously participated in a local recreational products show, and a \$4,000 increase is anticipated to result from a \$200 fee for inspection of offsite displays.

The proposed rule increases the fee for businesses that previously participated in a local recreational production show from \$200 per show to \$500 per show. Approximately 10 businesses annually participate in local recreational product shows. The commission has collected no revenue from regional shows.

The commission is anticipated to inspect 20 offsite displays annually at a cost of \$200 per display.

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

Under the proposed rule, the fee to participate in a recreational products show is \$500 per show. The new fee is the same as the amount currently required for participation in a regional show, and \$300 more than the existing fee of \$200 for participation in a local recreational product show. The Louisiana Motor Vehicle Commission has had no applications

for regional recreational production shows. All shows held in the past were classified as a local show.

Businesses utilizing offsite displays will be assessed a new fee of \$200 for inspection of such displays.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule will have no effect on competition and employment.

Ingva Cattle  
Assistant Executive Director  
1108#086

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Facility Need Review—Nursing Facilities  
(LAC 48:I.12511)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 48:12511 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 40:2116, and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

In compliance with the directives of Act 433 of the 2006 Regular Session of the Louisiana Legislature, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, adopted provisions governing the inclusion of adult residential care providers in the Facility Need Review Program and reorganized the provisions of Chapter 125 (*Louisiana Register*, Volume 34, Number 12).

The Department of Health and Hospitals, Bureau of Health Services Financing now proposes to amend the provisions governing the facility need review process for nursing facilities in order to revise the provisions governing the service area.

**Title 48**

**PUBLIC HEALTH—GENERAL**

**Part 1. General Administration**

**Subpart 5. Health Planning**

**Chapter 125. Facility Need Review**

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

**§12511. Nursing Facilities**

A. The service area for proposed or existing nursing facilities or beds is the parish in which the site is located.

1. Exception. Any parish that has any portion of the parish below Interstate 10 and which is intersected by the Mississippi river will be composed of two separate service areas as divided by the Mississippi River.

B. - J.4.a.

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

HISTORICAL NOTE: Repealed and repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:808 (August 1995), amended LR 28:2190 (October 2002), LR 30:1483 (July 2004), LR 34:2615 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

**Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule has no impact on family functioning, stability or autonomy as described in R.S. 49:972.

**Public Comments**

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule.

**Public Hearing**

A public hearing on this proposed Rule is scheduled for Wednesday, September 28, 2011 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Bruce D. Greenstein  
Secretary

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

**RULE TITLE: Facility Need Review  
Nursing Facilities**

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

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 11-12. It is anticipated that \$246 (SGF) will be expended in FY 11-12 for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will have no effect on revenue collections.

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

This proposed rule amends the provisions governing the facility need review process for nursing facilities in order to revise the provisions governing the service area. The current rule stipulates that the service area for proposed or existing nursing facilities is the parish in which the facility site is located. For parishes separated by the Mississippi River (St. Bernard, Plaquemines, Jefferson and Orleans), the proposed rule creates an exception which prevents nursing facility providers with a Certificate of Need from moving across the river to open another facility within the same parish. It is anticipated that implementation of this proposed rule will not have economic cost or benefits to nursing facilities for FY 11-12, FY 12-13, and FY 13-14.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Don Gregory  
Medicaid Director  
1108#078

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

## NOTICE OF INTENT

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

Inpatient Hospital Services  
Small Rural Hospitals  
Upper Payment Limit and Wrap-Around Payments  
(LAC 50:V.1125 and 1127)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:V.1125 and §1127 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

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

Act 883 of the 2010 Regular Session of the Louisiana Legislature directed the department to implement a payment methodology to optimize Medicaid payments to rural hospitals for inpatient and outpatient services. In compliance with the directives of Act 883, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for small rural hospitals to reimburse inpatient hospital services up to the Medicare inpatient upper payment limits (*Louisiana Register*, Volume 36, Number 8). This proposed Rule is being promulgated to continue the provisions of the August 1, 2010 Emergency Rule and to adopt provisions that will allow rural hospital reimbursement for inpatient services to continue at existing levels after the implementation of Coordinated Care Networks on January 1, 2012.

#### Title 50

#### PUBLIC HEALTH—MEDICAL ASSISTANCE

##### Part V. Hospital Services

##### Subpart 1. Inpatient Hospital Services

##### Chapter 11. Rural, Non-State Hospitals

##### Subchapter B. Reimbursement Methodology

##### §1125. Small Rural Hospitals

A. - C. ...

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

E. Effective for dates of service on or after January 1, 2012, payments to small rural hospitals shall be calculated as follows:

1. An average inpatient per diem rate for rural hospitals shall be determined by the department and communicated to all coordinated care network prepaid risk bearing managed care organization (CCN-P) models that are approved by the department.

2. The difference between the inpatient per diem rate on file as of December 31, 2011 and the average per diem rate per §1125.E.1 shall be reimbursed to the small rural hospital as a wrap-around payment. The wrap-around payment for each small rural hospital shall be the quarterly aggregate of this differential for all Medicaid CCN-P days.

3. The payment methodology in §1125.E.1-3 shall be contingent upon the approval of the corresponding Medicaid State Plan amendment by the Centers for Medicare and Medicaid Services (CMS). In the event that CMS does not render its approval, the aggregate differential shall be reimbursed either as a Medicaid supplemental payment utilizing the allowable upper payment limit for fee-for-service and coordinated care network fee-for-service with shared savings (CCN-S) models' Medicaid days or as a Medicaid disproportionate share hospital adjustment payment.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:955 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

##### §1127. Inpatient Psychiatric Hospital Services

A. - C. ...

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

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:955 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

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

##### Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability and autonomy as described in R.S. 49:972.

##### Public Comments

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule.

##### Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, September 28, 2011 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally

or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Bruce D. Greenstein  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Inpatient Hospital Services  
Small Rural Hospitals—Upper Payment Limit and  
Wrap-Around Payments**

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

It is anticipated that the implementation of this proposed rule will result in estimated state general fund programmatic costs of \$6,898,465 for FY 11-12 \$7,003,242 for FY 12-13 and \$7,213,340 for FY 13-14. It is anticipated that \$410 (\$205 SGF and \$205 FED) will be expended in FY 11-12 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 69.34 percent in FY 11-12. The enhanced rate of 69.78 percent for the last nine months of FY 12 is the federal rate for disaster-recovery FMAP adjustment states.

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

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$15,601,164 for FY 11-12 \$16,170,954 for FY 12-13 and \$16,656,082 for FY 13-14. It is anticipated that \$205 will be expended in FY 11-12 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 69.34 percent in FY 11-12. The enhanced rate of 69.78 percent for the last nine months of FY 12 is the federal rate for disaster-recovery FMAP adjustment states.

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

This proposed rule continues the provisions of the August 1, 2010 emergency rule which amended the provisions governing the reimbursement methodology for small rural hospitals to reimburse inpatient hospital services up to the Medicare inpatient upper payment limits, and adopts provisions that will allow small rural inpatient hospital payments to continue at existing per diem rates (FY 2011 payment amounts) after the implementation of Coordinated Care Networks (CCNs) on January 1, 2012. It is anticipated that implementation of this proposed rule will increase programmatic expenditures in the Medicaid Program by approximately \$22,499,219 for FY 11-12, \$23,174,196 for FY 12-13 and \$23,869,422 for FY 13-14 for the Medicare upper payment limit component only. Since the wrap-around payment provisions are being adopted to continue payments at existing levels after CCN implementation, there will be no fiscal impact for this component of the proposed rule.

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

It is anticipated that the implementation of this proposed rule will not have an effect on competition and employment.

Don Gregory  
Medicaid Director  
1108#077

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Mental Health Rehabilitation Program  
Termination of Parent/Family Intervention (Intensive)  
Services and Reimbursement Rate Reduction  
(LAC 50:XV.335, 501-505 and 901)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to repeal LAC 50:XV.335 and amend LAC 50:XV.501-505 and §901 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for the Mental Health Rehabilitation (MHR) Program to reduce the reimbursement rates paid for mental health rehabilitation services (*Louisiana Register*, Volume 36, Number 11). As a result of a budgetary shortfall in state fiscal year 2011, the department promulgated an Emergency Rule which terminated the coverage of Parent/Family Intervention (Intensive) (PFII) services in the MHR Program and amended the provisions governing medical necessity for MHR services in order to establish continued treatment criteria (*Louisiana Register*, Volume 36, Number 8). Recipients receiving PFII services shall be transitioned to comparable services available in the MHR Program. The department promulgated an Emergency Rule which amended the provisions of the August 1, 2010 Emergency Rule to revise the formatting of LAC 50:XV.901 as a result of the promulgation of the November 20, 2010 final Rule governing mental health rehabilitation services (*Louisiana Register*, Volume 36, Number 11).

Due to a continuing budgetary shortfall, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for mental health rehabilitation services to further reduce the reimbursement rates (*Louisiana Register*, Volume 37, Number 1). This proposed Rule is being promulgated to continue the provisions of the November 20, 2010 and January 1, 2011 Emergency Rules.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part XV. Services for Special Populations**

**Subpart 1. Mental Health Rehabilitation**

**Chapter 3. Covered Services and Staffing Requirements**

**Subchapter C. Optional Services**

**§335. Parent/Family Intervention (Intensive)**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1085 (May 2005), amended LR 32:2067 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:2758 (December 2009), repealed LR 37:

**Chapter 5. Medical Necessity Criteria**

**§501. General Provisions**

A. - C. ...

D. Initially all recipients must meet the medical necessity criteria for diagnosis, disability, duration and level of care. MHR providers shall rate recipients on the CALOCUS/LOCUS at 90 day intervals, or at an interval otherwise specified by the bureau, and these scores and supporting documentation must be submitted to the bureau or its designee upon request. Ongoing services require authorization which may occur every 90 days or at any interval requested by the bureau or its designee, based on progress towards goals, individual needs, and level of care requirements which are consistent with the medical necessity criteria.

E. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1086 (May 2005) amended LR 32:2067 (November 2006), LR 34:1914 (September 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

**§503. Adult Criteria for Services**

A. - A.3.d.Note. ...

B. Criteria for Continued Treatment. Continuation of MHR treatment is medically necessary for individuals who meet all of the following criteria:

1. clinical evidence indicates a persistence of the problems that necessitated the provision of MHR services;

2. clinical evidence indicates that a less intensive level of care would result in exacerbation of the symptoms of the individual's mental disorder and clinical deterioration;

3. the ISRP has been developed, implemented and updated based on the individual recipient's clinical condition and response to treatment, as well as the strengths and availability of natural supports, with realistic goals and objectives clearly stated;

4. the recipient is actively engaged in treatment as evidenced by regular participation in services as scheduled;

5. progress is evident that the individual's disorder can be expected to improve significantly through medically necessary, appropriate therapy and that the individual is able to benefit from the therapy provided; and

6. there is clinical evidence of symptom improvement. If there has been no improvement, the ISRP may be reviewed and the frequency, amount or duration of services may be adjusted to a clinically appropriate level as determined by the bureau.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, amended LR 32:2068 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

**§505. Child/Adolescent Criteria for Services**

A. - A.3.d. ...

B. Criteria for Continued Treatment. Continuation of MHR treatment is medically necessary for children/youth who meet all of the following criteria:

1. clinical evidence indicates a persistence of the problems that necessitated the provision of MHR services;

2. clinical evidence indicates that a less intensive level of care would result in exacerbation of the symptoms of the child's mental or behavioral disorder and clinical deterioration;

3. the ISRP has been developed, implemented and updated based on the individual child's clinical condition and response to treatment, as well as the strengths and availability of natural supports, with realistic goals and objectives clearly stated;

4. the recipient and family are actively engaged in treatment as evidenced by regular participation in services as scheduled;

5. progress is evident that the child's mental or behavioral disorder can be expected to improve significantly through medically necessary, appropriate therapy and that the child is able to benefit from the therapy provided; and

6. there is clinical evidence of symptom improvement. If there has been no improvement, the ISRP may be reviewed and the frequency, amount or duration of services may be adjusted to a clinically appropriate level as determined by the bureau.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2068 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

**Chapter 9. Reimbursement**

**§901. Reimbursement Methodology**

A. - F. ...

G. Effective for dates of service on or after August 1, 2010, Medicaid reimbursement shall be terminated for parent/family intervention (intensive) services.

H. Effective for dates of service on or after January 1, 2011, the reimbursement rates for Mental Health Rehabilitation services shall be reduced by 3.3 percent of the rates on file as of December 31, 2010.

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

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

Financing, LR 35:1899 (September 2009), amended LR 36:1249 (June 2010), LR 36:2564 (November 2010), LR:37

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

#### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule may have an adverse impact on family functioning, stability and autonomy as described in R.S. 49:972 in the event that provider participation in the Medicaid Program is diminished as a result of reduced reimbursement rates.

#### **Public Comments**

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule.

#### **Public Hearing**

A public hearing on this proposed Rule is scheduled for Wednesday, September 28, 2011 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Bruce D. Greenstein  
Secretary

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

#### **RULE TITLE: Mental Health Rehabilitation Program Termination of Parent/Family Intervention (Intensive) Services and Reimbursement Rate Reduction**

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

It is anticipated that the implementation of this proposed rule will result in estimated state general fund programmatic savings of \$621,514 for FY 11-12, \$631,347 for FY 12-13 and \$650,288 for FY 13-14. It is anticipated that \$738 (\$369 SGF and \$369 FED) will be expended in FY 11-12 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 69.34 percent in FY 11-12. The enhanced rate of 69.78 percent for the last nine months of FY 12 is the federal rate for disaster-recovery FMAP adjustment states.

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

It is anticipated that the implementation of this proposed rule will reduce federal revenue collections by approximately \$1,406,068 for FY 11-12, \$1,457,823 for FY 12-13 and \$1,501,557 for FY 13-14. It is anticipated that \$369 will be expended in FY 11-12 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 69.34 percent in FY 11-12. The enhanced rate of 69.78 percent for the last

nine months of FY 12 is the federal rate for disaster-recovery FMAP adjustment states.

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

This proposed rule, which continues the provisions of the November 20, 2010 and January 1, 2011 emergency rules, amends the provisions governing the mental health rehabilitation program to terminate the coverage of Parent/Family Intervention (Intensive) (PFII) services, amend the provisions governing medical necessity for MHR services in order to establish continued treatment criteria and reduce the reimbursement rates. It is anticipated that implementation of this proposed rule will reduce programmatic expenditures in the Medicaid Program by approximately \$2,028,320 for FY 11-12, \$2,089,170 for FY 12-13 and \$2,151,845 for FY 13-14.

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

It is anticipated that the implementation of this proposed rule will not have an effect on competition. However, we anticipate that the implementation may have a negative effect on employment as it will reduce the payments made to mental health rehabilitation providers. The reduction in payments may adversely impact the financial standing of mental health rehabilitation providers and could possibly cause a reduction in employment opportunities.

Don Gregory  
Medicaid Director  
1108#076

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

### **NOTICE OF INTENT**

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

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

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:XV.25701 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq.

As a result of a budgetary shortfall in state fiscal year 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing multi-systemic therapy (MST) to reduce the reimbursement rates and to establish prior authorization requirements (*Louisiana Register*, Volume 36, Number 11). As a result of a budgetary shortfall in state fiscal year 2011, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement

methodology for MST services to reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 8). The August 1, 2010 Emergency Rule was amended to revise the formatting of LAC 50:XV.25701 as a result of the promulgation of the November 20, 2010 final Rule governing MST services (*Louisiana Register*, Volume 36, Number 11).

Due to a continuing budgetary shortfall, the department promulgated an Emergency Rule which further reduced the reimbursement rates paid for MST services (*Louisiana Register*, Volume 37, Number 1). This proposed Rule is being promulgated to continue the provisions of the November 20, 2010 and the January 1, 2011 Emergency Rules.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part XV. Services for Special Populations**

#### **Subpart 17. Multi-Systemic Therapy**

#### **Chapter 257. Reimbursement**

#### **§25701. Reimbursement Methodology**

A. - C. ...

D. Effective for dates of service on or after August 1, 2010, the reimbursement rates for multi-systemic therapy services shall be reduced by 2.63 percent of the rates on file as of July 31, 2010.

E. Effective for dates of service on or after January 1, 2011, the reimbursement rates for multi-systemic therapy services shall be reduced by 3 percent of the rates on file as of December 31, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services financing, LR 35:247 (February 2009), amended LR 36:1250 (June 2010), LR 36:2565 (November 2010), LR 37:

#### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule may have an adverse impact on family functioning, stability and autonomy as described in R.S. 49:972 in the event that provider participation in the Medicaid Program is diminished as a result of reduced reimbursement rates.

#### **Public Comments**

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule.

#### **Public Hearing**

A public hearing on this proposed Rule is scheduled for Wednesday, September 28, 2011 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written

comments is 4:30 p.m. on the next business day following the public hearing.

Bruce D. Greenstein  
Secretary

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

#### **RULE TITLE: Multi-Systemic Therapy Reimbursement Rate Reduction**

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

It is anticipated that the implementation of this proposed rule will result in estimated programmatic savings to the state of \$178,196 for FY 11-12, \$181,074 for FY 12-13 and \$186,506 for FY 13-14. It is anticipated that \$328 (\$164 SGF and \$164 FED) will be expended in FY 11-12 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 69.34 percent in FY 11-12. The enhanced rate of 69.78 percent for the last nine months of FY 12 is the federal rate for disaster-recovery FMAP adjustment states.

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

It is anticipated that the implementation of this proposed rule will reduce federal revenue collections by approximately \$403,211 for FY 11-12, \$418,113 for FY 12-13 and \$430,656 for FY 13-14. It is anticipated that \$164 will be expended in FY 11-12 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 69.34 percent in FY 11-12. The enhanced rate of 69.78 percent for the last nine months of FY 12 is the federal rate for disaster-recovery FMAP adjustment states.

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

This proposed rule, which continues the provisions of the November 20, 2010 and the January 1, 2011 emergency rules, amends the provisions governing the reimbursement methodology for multi-systemic therapy (MST) services to reduce the reimbursement rates. It is anticipated that implementation of this proposed rule will reduce program expenditures in the Medicaid Program by approximately \$581,735 for FY 11-12, \$599,187 for FY 12-13 and \$617,162 for FY 13-14.

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

It is anticipated that the implementation of this proposed rule will not have an effect on competition. However, we anticipate that the implementation may have a negative effect on employment as it will reduce the payments made for multi-systemic therapy services. The reduction in payments may adversely impact the financial standing of providers and could possibly cause a reduction in employment opportunities.

Don Gregory  
Medicaid Director  
1108#075

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

## NOTICE OF INTENT

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

Outpatient Hospital Services  
Non-Rural, Non-State Hospitals and Children's  
Specialty Hospitals Reimbursement Rate Reduction  
(LAC:V.5313, 5317, 5513, 5517,  
5713, 5719, 6115 and 6119)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:V.5313, §5317, §5513, §5517, §5713, §5719, §6115 and §6119 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

As a result of a budgetary shortfall in state fiscal year 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for outpatient hospital services to reduce the reimbursement rates paid to non-rural, non-state hospitals and children's specialty hospitals (*Louisiana Register*, Volume 36, Number 9). As a result of a budgetary shortfall in state fiscal year 2011, the department promulgated an Emergency Rule which amended the provisions governing outpatient hospital services to reduce the reimbursement rates paid to non-rural, non-state hospitals and children's specialty hospitals (*Louisiana Register*, Volume 36, Number 8). The August 1, 2010 Emergency Rule was amended to revise the formatting as a result of the promulgation of the September 20, 2010 final Rule governing outpatient hospital services (*Louisiana Register*, Volume 36, Number 11).

Due to a continuing budgetary shortfall, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for outpatient hospital services to further reduce the reimbursement rates paid to non-rural, non-state hospitals and children's specialty hospitals (*Louisiana Register*, Volume 37, Number 1). This proposed Rule is being promulgated to continue the provisions of the November 20, 2010 and the January 1, 2011 Emergency Rules.

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

## Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part V. Hospitals

##### Subpart 5. Outpatient Hospitals

#### Chapter 53. Outpatient Surgery

##### Subchapter B. Reimbursement Methodology

#### §5313. Non-Rural, Non-State Hospitals

A. - D. ...

1. Small rural hospitals as defined in R.S. 40:1300.143 shall be exempted from this rate reduction.

E. Effective for dates of service on or after August 1, 2010, the reimbursement paid to non-rural, non-state hospitals for outpatient surgery shall be reduced by 4.6 percent of the fee schedule on file as of July 31, 2010.

1. Small rural hospitals as defined in R.S. 40:1300.143 shall be exempted from this rate reduction.

F. Effective for dates of service on or after January 1, 2011, the reimbursement paid to non-rural, non-state hospitals for outpatient surgery shall be reduced by 2 percent of the fee schedule on file as of December 31, 2010.

1. Small rural hospitals as defined in R.S. 40:1300.143 shall be exempted from this rate reduction.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:1900 (September 2009), amended LR 36:1250 (June 2010), amended LR 36:1250 (June 2010), LR 36:2041 (September 2010), LR 37:

#### §5317. Children's Specialty Hospitals

A. - B.1. ...

C. Effective for dates of service on or after August 1, 2010, the reimbursement paid to children's specialty hospitals for outpatient surgery shall be reduced by 4.6 percent of the fee schedule on file as of July 31, 2010.

1. Final reimbursement shall be 87.91 percent of allowable cost as calculated through the cost report settlement process.

D. Effective for dates of service on or after January 1, 2011, the reimbursement paid to children's specialty hospitals for outpatient surgery shall be reduced by 2 percent of the fee schedule on file as of December 31, 2010.

1. Final reimbursement shall be 86.15 percent of allowable cost as calculated through the cost report settlement process.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2042 (September 2010), amended LR 37:

#### Chapter 55. Clinic Services

##### Subchapter B. Reimbursement Methodology

#### §5513. Non-Rural, Non-State Hospitals

A. - D. ...

1. Small rural hospitals as defined in R.S. 40:1300.143 shall be exempted from this rate reduction.

E. Effective for dates of service on or after August 1, 2010, the reimbursement paid to non-rural, non-state hospitals for outpatient clinic services shall be reduced by 4.6 percent of the fee schedule on file as of July 31, 2010.

1. Small rural hospitals as defined in R.S. 40:1300.143 shall be exempted from this rate reduction.



F. Effective for dates of service on or after January 1, 2011, the reimbursement paid to non-rural, non-state hospitals for outpatient clinic services shall be reduced by 2 percent of the fee schedule on file as of December 31, 2010.

1. Small rural hospitals as defined in R.S. 40:1300.143 shall be exempted from this rate reduction.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:1900 (September 2009), amended LR 36:1250 (June 2010), amended LR 36:1250 (June 2010), LR 36:2042 (September 2010), LR 37:

#### **§5517. Children's Specialty Hospitals**

A. - B. ...

C. Effective for dates of service on or after August 1, 2010, the reimbursement paid to children's specialty hospitals for outpatient hospital clinic services shall be reduced by 4.6 percent of the fee schedule on file as of July 31, 2010.

D. Effective for dates of service on or after January 1, 2011, the reimbursement paid to children's specialty hospitals for outpatient hospital clinic services shall be reduced by 2 percent of the fee schedule on file as of December 31, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2042 (September 2010), amended LR 37:

#### **Chapter 57. Laboratory Services**

##### **Subchapter B. Reimbursement Methodology**

#### **§5713. Non-Rural, Non-State Hospitals**

A. - D. ...

1. Small rural hospitals as defined in R.S. 40:1300.143 shall be exempted from this rate reduction.

E. Effective for dates of service on or after August 1, 2010, the reimbursement paid to non-rural, non-state hospitals for outpatient laboratory services shall be reduced by 4.6 percent of the fee schedule on file as of July 31, 2010.

1. Small rural hospitals as defined in R.S. 40:1300.143 shall be exempted from this rate reduction.

F. Effective for dates of service on or after January 1, 2011, the reimbursement paid to non-rural, non-state hospitals for outpatient laboratory services shall be reduced by 2 percent of the fee schedule on file as of December 31, 2010.

1. Small rural hospitals as defined in R.S. 40:1300.143 shall be exempted from this rate reduction.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:1900 (September 2009), amended LR 36:1250 (June 2010), amended LR 36:1250 (June 2010), LR 36:2042 (September 2010), LR 37:

#### **§5719. Children's Specialty Hospitals**

A. - B. ...

C. Effective for dates of service on or after August 1, 2010, the reimbursement paid to non-rural, non-state hospitals for outpatient clinical diagnostic laboratory services shall be reduced by 4.6 percent of the fee schedule on file as of July 31, 2010.

D. Effective for dates of service on or after January 1, 2011, the reimbursement paid to non-rural, non-state hospitals for outpatient clinical diagnostic laboratory services shall be reduced by 2 percent of the fee schedule on file as of December 31, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2043 (September 2010), amended LR 37:

#### **Chapter 61. Other Outpatient Hospital Services**

##### **Subchapter B. Reimbursement Methodology**

#### **§6115. Non-Rural, Non-State Hospitals**

A. - D. ...

1. Small rural hospitals as defined in R.S. 40:1300.143 shall be exempted from this rate reduction.

E. Effective for dates of service on or after August 1, 2010, the reimbursement paid to non-rural, non-state hospitals for outpatient hospital services other than clinical diagnostic laboratory services, outpatient surgeries, rehabilitation services and outpatient hospital facility fees shall be reduced by 4.6 percent of the rates effective as of July 31, 2010. Final reimbursement shall be at 71.13 percent of allowable cost through the cost settlement process.

1. Small rural hospitals as defined in R.S. 40:1300.143 shall be exempted from this rate reduction.

F. Effective for dates of service on or after January 1, 2011, the reimbursement paid to non-rural, non-state hospitals for outpatient hospital services other than clinical diagnostic laboratory services, outpatient surgeries, rehabilitation services and outpatient hospital facility fees shall be reduced by 2 percent of the rates effective as of December 31, 2010. Final reimbursement shall be at 69.71 percent of allowable cost through the cost settlement process.

1. Small rural hospitals as defined in R.S. 40:1300.143 shall be exempted from this rate reduction.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:1900 (September 2009), amended LR 36:1250 (June 2010), amended LR 36:1250 (June 2010), amended LR 36:2043 (September 2010), LR 37:

#### **§6119. Children's Specialty Hospitals**

A. - B.1. ...

C. Effective for dates of service on or after August 1, 2010, the reimbursement fees paid to children's specialty hospitals for outpatient hospital services other than rehabilitation services and outpatient hospital facility fees shall be reduced by 4.6 percent of the rates effective as of July 31, 2010.

1. Final reimbursement shall be 87.91 percent of allowable cost as calculated through the cost report settlement process.

D. Effective for dates of service on or after January 1, 2011, the reimbursement fees paid to children's specialty hospitals for outpatient hospital services other than rehabilitation services and outpatient hospital facility fees shall be reduced by 2 percent of the rates effective as of December 31, 2010.

1. Final reimbursement shall be 86.15 percent of allowable cost as calculated through the cost report settlement process.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2044 (September 2010), amended LR 37:

**Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule may have an adverse impact on family functioning, stability and autonomy as described in R.S. 49:972 in the event that provider participation in the Medicaid Program is diminished as a result of reduced reimbursement rates.

**Public Comments**

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule.

**Public Hearing**

A public hearing on this proposed Rule is scheduled for Wednesday, September 28, 2011 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Bruce D. Greenstein  
Secretary

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

**RULE TITLE: Outpatient Hospital Services  
Non-Rural, Non-State Hospitals and Children's  
Specialty Hospitals Reimbursement Rate Reduction**

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

It is anticipated that the implementation of this proposed rule will result in estimated programmatic savings to the state of \$3,438,979 for FY 11-12, \$3,491,773 for FY 12-13 and \$3,596,527 for FY 13-14. It is anticipated that \$902 (\$451 SGF and \$451 FED) will be expended in FY 11-12 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 69.34 percent in FY 11-12. The enhanced rate of 69.78 percent for the last nine months of FY 12 is the federal rate for disaster-recovery FMAP adjustment states.

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

It is anticipated that the implementation of this proposed rule will reduce federal revenue collections by approximately \$7,778,090 for FY 11-12, \$8,062,737 for FY 12-13 and \$8,304,619 for FY 13-14. It is anticipated that \$451 will be expended in FY 11-12 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 69.34 percent in FY 11-12. The enhanced rate of 69.78 percent for the last

nine months of FY 12 is the federal rate for disaster-recovery FMAP adjustment states.

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

This proposed rule, which continues the provisions of the November 20, 2010 and the January 1, 2011 emergency rules, amends the provisions governing the reimbursement methodology for outpatient hospital services to further reduce the reimbursement rates paid to non-rural, non-state hospitals and children's specialty hospitals. It is anticipated that implementation of this proposed rule will reduce program expenditures in the Medicaid Program by approximately \$11,217,971 for FY 11-12, \$11,554,510 for FY 12-13 and \$11,901,146 for FY 13-14.

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

It is anticipated that the implementation of this proposed rule will not have an effect on competition. However, we anticipate that the implementation may have a negative effect on employment as it will reduce the payments made to hospitals for outpatient hospital services. The reduction in payments may adversely impact the financial standing of these hospitals and could possibly cause a reduction in employment opportunities.

Don Gregory  
Medicaid Director  
1108#082

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Outpatient Hospital Services  
Small Rural Hospitals

Upper Payment Limit and Wrap-Around Payments  
(LAC 50:V.5311, 5511, 5711, 5911, and 6113)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:V.5311, §5511, §5711, §5911, and §6113 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

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

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

1, 2010 Emergency Rule and to adopt provisions that will allow rural hospital reimbursement for outpatient services to continue at existing levels after the implementation of Coordinated Care Networks on January 1, 2012.

#### **Title 50**

### **PUBLIC HEALTH-MEDICAL ASSISTANCE**

#### **Part V. Hospitals**

##### **Subpart 5. Outpatient Hospitals**

#### **Chapter 53. Outpatient Surgery**

##### **Subchapter B. Reimbursement Methodology**

#### **§5311. Small Rural Hospitals**

A. - A.2.a. ...

B. Effective for dates of service on or after August 1, 2010, small rural hospitals shall be reimbursed for outpatient hospital surgery services up to the Medicare outpatient upper payment limits.

C. Effective for dates of service on or after January 1, 2012, payments to small rural hospitals shall be calculated as follows.

1. Average outpatient surgery fee schedule rates for rural hospitals shall be determined by the department and communicated to all coordinated care network prepaid risk bearing managed care organization (CCN-P) models that are approved by the department.

2. The difference between the 110 percent of the outpatient surgery Medicaid costs and the average outpatient surgery fee schedule rates per §5311.C.1 above shall be reimbursed to the small rural hospital as a wrap around payment. The wrap around payment for each small rural hospital shall be the quarterly aggregate of this differential for all Medicaid CCN-P outpatient surgery services.

3. The payment methodology in §5311.C.1-3 shall be contingent upon the approval of the corresponding Medicaid State Plan amendment by the Centers for Medicare and Medicaid Services (CMS). In the event that CMS does not render its approval, the aggregate differential shall be reimbursed either as a Medicaid supplemental payment utilizing the allowable upper payment limit for fee-for-service and coordinated care network fee-for-service with shared savings (CCN-S) models' Medicaid outpatient services or as a Medicaid disproportionate share hospital adjustment payment.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:956 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

#### **Chapter 55. Clinic Services**

##### **Subchapter B. Reimbursement Methodology**

#### **§5511. Small Rural Hospitals**

A. - A.2.a. ...

B. Effective for dates of service on or after August 1, 2010, small rural hospitals shall be reimbursed for outpatient hospital clinic services up to the Medicare outpatient upper payment limits.

C. Effective for dates of service on or after January 1, 2012, payments to small non-state rural hospitals shall be calculated as follows.

1. Average outpatient hospital clinic fee schedule rates for rural hospitals shall be determined by the department and

communicated to all CCN-P plans that are approved by the department.

2. The difference between the 110 percent of the outpatient hospital clinic Medicaid costs and the average outpatient hospital clinic fee schedule rates per §5511.C.1 above shall be reimbursed to the small rural hospital as a wrap around payment. The wrap around payment for each small rural hospital shall be the quarterly aggregate of this differential for all Medicaid CCN-P outpatient hospital clinic services.

3. The payment methodology in §5511.C.1-3 shall be contingent upon the approval of the corresponding Medicaid State Plan amendment by the Centers for Medicare and Medicaid Services (CMS). In the event that CMS does not render its approval, the aggregate differential shall be reimbursed either as a Medicaid supplemental payment utilizing the allowable upper payment limit for fee-for-service and coordinated care network fee-for-service with shared savings (CCN-S) models' Medicaid outpatient services or as a Medicaid disproportionate share hospital adjustment payment.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:956 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

#### **Chapter 57. Laboratory Services**

##### **Subchapter B. Reimbursement Methodology**

#### **§5711. Small Rural Hospitals**

A. ...

B. Effective for dates of service on or after August 1, 2010, small rural hospitals shall be reimbursed for outpatient clinical diagnostic laboratory services up to the Medicare outpatient upper payment limits.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:956 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

#### **Chapter 59. Rehabilitation Services**

##### **Subchapter B. Reimbursement Methodology**

#### **§5911. Small Rural Hospitals**

A. - A.2.a. ...

B. Effective for dates of service on or after August 1, 2010, small rural hospitals shall be reimbursed for rehabilitation services up to the Medicare outpatient upper payment limits.

C. Effective for dates of service on or after January 1, 2012, payments to small non-state rural hospitals shall be calculated as follows.

1. Average outpatient rehabilitation fee schedule rates for rural hospitals shall be determined by the department and communicated to all CCN-P plans that are approved by the department.

2. The difference between the 110 percent of the outpatient rehabilitation Medicaid costs and the average outpatient rehabilitation fee schedule rates per §5911.C.1 above shall be reimbursed to the small rural hospital as a wrap around payment. The wrap around payment for each

small rural hospital shall be the quarterly aggregate of this differential for all Medicaid CCN-P outpatient rehabilitation services.

3. The payment methodology in §5911.C.1-3 shall be contingent upon the approval of the corresponding Medicaid State Plan amendment by the Centers for Medicare and Medicaid Services (CMS). In the event that CMS does not render its approval, the aggregate differential shall be reimbursed either as a Medicaid supplemental payment utilizing the allowable upper payment limit for fee-for-service and coordinated care network fee-for-service with shared savings (CCN-S) models' Medicaid outpatient services or as a Medicaid disproportionate share hospital adjustment payment.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:956 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

## **Chapter 61. Other Outpatient Hospital Services**

### **Subchapter B. Reimbursement Methodology**

#### **§6113. Small Rural Hospitals**

A. - A.2. ...

B. Effective for dates of service on or after August 1, 2010, small rural hospitals shall be reimbursed for services other than clinical diagnostic laboratory services, outpatient surgeries, rehabilitation services, and outpatient hospital facility fees up to the Medicare outpatient upper payment limits.

C. Effective for dates of service on or after January 1, 2012, payments to small non-state rural hospitals shall be calculated as follows.

1. Average outpatient rates for other hospital services for rural hospitals shall be determined by the department and communicated to all CCN-P plans that are approved by the department.

2. The difference between the 110% of the outpatient Medicaid costs and the average outpatient rates per §6113.C.1 above shall be reimbursed to the small rural hospital as a wrap around payment. The wrap around payment for each small rural hospital shall be the quarterly aggregate of this differential for all Medicaid CCN-P outpatient services.

3. The payment methodology in §6113.C.1-3 shall be contingent upon the approval of the corresponding Medicaid State Plan amendment by the Centers for Medicare and Medicaid Services (CMS). In the event that CMS does not render its approval, the aggregate differential shall be reimbursed either as a Medicaid supplemental payment utilizing the allowable upper payment limit for fee-for-service and coordinated care network fee-for-service with shared savings (CCN-S) models' Medicaid outpatient services or as a Medicaid disproportionate share hospital adjustment payment.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:956 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

## **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact upon family functioning, stability and autonomy as described in R.S. 49:972.

## **Public Comments**

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule.

## **Public Hearing**

A public hearing on this proposed Rule is scheduled for Wednesday, September 28, 2011 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Bruce D. Greenstein  
Secretary

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

### **RULE TITLE: Outpatient Hospital Services Small Rural Hospitals—Upper Payment Limit and Wrap-Around Payments**

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

It is anticipated that the implementation of this proposed rule will result in estimated state general fund programmatic costs of \$5,942,824 for FY 11-12, \$6,032,848 for FY 12-13 and \$6,213,834 for FY 13-14. It is anticipated that \$820 (\$410 SGF and \$410 FED) will be expended in FY 11-12 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 69.34 percent in FY 11-12. The enhanced rate of 69.78 percent for the last nine months of FY 12 is the federal rate for disaster-recovery FMAP adjustment states.

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

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$13,439,646 for FY 11-12, \$13,930,251 for FY 12-13 and \$14,348,158 for FY 13-14. It is anticipated that \$410 will be expended in FY 11-12 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 69.34 percent in FY 11-12. The enhanced rate of 69.78 percent for the last nine months of FY 12 is the federal rate for disaster-recovery FMAP adjustment states.

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

This proposed rule continues the provisions of the August 1, 2011 emergency rule which amended the provisions governing the reimbursement methodology for small rural

hospitals to reimburse outpatient hospital services up to the Medicare inpatient upper payment limits, and adopts provisions that will allow rural hospital reimbursement for outpatient services to continue at existing rates (FY 2011 payment amounts) after the implementation of Coordinated Care Networks (CCNs) on January 1, 2012. It is anticipated that implementation of this proposed rule will increase programmatic expenditures in the Medicaid Program by approximately \$19,381,650 for FY 11-12, \$19,963,099 for FY 12-13 and \$20,561,992 for FY 13-14 for the Medicare upper payment limit component only. Since the wrap-around payment provisions are being adopted to continue payments at existing levels after CCN implementation, there will be no fiscal impact for this component of the proposed rule.

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

It is anticipated that the implementation of this proposed rule will not have an effect on competition and employment.

Don Gregory  
Medicaid Director  
1108#081

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

### NOTICE OF INTENT

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

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

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services propose to amend LAC 50:XV.12917 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

As a result of a budgetary shortfall in state fiscal year 2010, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amended the provisions governing the reimbursement methodology for long-term personal care services to reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 6). As a result of a budgetary shortfall in state fiscal year 2011, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for long-term personal care services to reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 8).

Due to a continuing budgetary shortfall, the department promulgated an Emergency Rule which amended the

provisions governing the reimbursement methodology for long-term personal care services to further reduce the reimbursement rates (*Louisiana Register*, Volume 37, Number 1). The department promulgated an Emergency Rule which amended the January 1, 2011 Emergency Rule in order to revise the reimbursement rates paid for shared long-term personal care services (*Louisiana Register*, Volume 37, Number 4). This proposed Rule is being promulgated to continue the provisions of the August 1, 2010 and April 20, 2011 Emergency Rules.

### Title 50

#### PUBLIC HEALTH—MEDICAL ASSISTANCE

##### Part XV. Services for Special Populations

##### Subpart 9. Personal Care Services

##### Chapter 129. Long-Term Care

##### §12917. Reimbursement Methodology

A. - E. ...

F. Effective for dates of service on or after August 1, 2010, the reimbursement rate for long-term personal care services shall be reduced by 4.6 percent of the rate on file as of July 31, 2010.

G. Effective for dates of service on or after January 1, 2011, the reimbursement rate for long-term personal care services shall be reduced by 5.8 percent of the rate on file as of December 31, 2010.

H. Effective for dates of service on or after April 20, 2011, shared long-term personal care services shall be reimbursed:

1. 80 percent of the rate on file as of April 19, 2011 for two participants; and

2. 70 percent of the rate on file as of April 19, 2011 for three participants.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:913 (June 2003), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:253 (February 2008), LR 34:2581 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:1901 (September 2009), LR 36:1251 (June 2010), LR 37:

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

##### Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule may have an adverse impact on family functioning, stability and autonomy as described in R.S. 49:972 in the event that provider participation in the Medicaid Program is diminished as a result of reduced reimbursement rates.

##### Public Comments

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule.

## Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, September 28, 2011 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Bruce D. Greenstein  
Secretary

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: Personal Care Services—Long-Term Reimbursement Rate Reduction

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that the implementation of this proposed rule will result in estimated state general fund programmatic savings of \$5,884,626 for FY 11-12, \$5,974,349 for FY 12-13 and \$6,153,579 for FY 13-14. It is anticipated that \$328 (\$164 SGF and \$164 FED) will be expended in FY 11-12 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 69.34 percent in FY 11-12. The enhanced rate of 69.78 percent for the last nine months of FY 12 is the federal rate for disaster-recovery FMAP adjustment states.

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

It is anticipated that the implementation of this proposed rule will reduce federal revenue collections by approximately \$13,308,752 for FY 11-12, \$13,795,169 for FY 12-13 and \$14,209,024 for FY 13-14. It is anticipated that \$164 will be expended in FY 11-12 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 69.34 percent in FY 11-12. The enhanced rate of 69.78 percent for the last nine months of FY 12 is the federal rate for disaster-recovery FMAP adjustment states.

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

This proposed rule, which continues the provisions of the August 1, 2010 and April 20, 2011 emergency rules, amends the provisions governing the reimbursement methodology for long-term personal care services to reduce the reimbursement rates. It is anticipated that implementation of this proposed rule will reduce programmatic expenditures in the Medicaid Program by approximately \$19,193,706 for FY 11-12, \$19,769,518 for FY 12-13 and \$20,362,603 for FY 13-14.

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

It is anticipated that the implementation of this proposed rule will not have an effect on competition. However, we anticipate that the implementation may have a negative effect on employment as it will reduce the payments made to personal care services providers. The reduction in payments may adversely impact the financial standing of personal care

services providers and could possibly cause a reduction in employment opportunities.

Don Gregory  
Medicaid Director  
1108#080

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

## NOTICE OF INTENT

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

Pharmacy Benefits Management Program  
Lock-In Program  
(LAC 50:XXIX.Chapter 3)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:XXIX.Chapter 3 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, repromulgated all of the rules governing the Pharmacy Benefits Management Program in a codified format for inclusion in the Louisiana Administrative Code (*Louisiana Register*; Volume 32, Number 6).

The department now proposes to amend the provisions governing the Pharmacy Benefits Management Program in order to revise and clarify the provisions governing the Pharmacy Lock-In Program.

#### Title 50

#### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part XXIX. Pharmacy

#### Chapter 3. Lock-In Program

#### §301. Introduction

A. ...

B. Lock-in is a mechanism for restricting Medicaid recipients to a specific physician and/or a specific pharmacy provider. The lock-in mechanism does not prohibit the recipient from receiving services from providers who offer services other than physician and pharmacy benefits. The lock-in mechanism:

1. ...

2. serves as an educational and monitoring parameter in instructing recipients in the most efficient method of using Medicaid services to ensure maximum health benefits.

C. A Medicaid recipient who has shown a consistent pattern of misuse or overuse of program benefits may be placed into the lock-in mechanism. Misuse and overuse is a determination made by the Department of Health and Hospitals, Bureau of Health Services Financing. Misuse and overuse can occur in a variety of ways.

1. Misuse may take the form of obtaining prescriptions under the pharmacy program from various prescribers and/or pharmacies in an uncontrolled and unsound way.

2. Misuse may take the form of obtaining prescriptions or the dispersal of prescriptions by fraudulent actions.

D. The Bureau of Health Services Financing or its medical designee shall be responsible to determine when a recipient should be enrolled in lock-in.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1056 (June 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

### **§303. Recipient Placement in the Lock-In Mechanism**

A. Potential lock-in recipients will be identified through review of various reports or by referral from other interested parties. Department of Health and Hospitals designee(s) who are medical professionals examine data for a consistent pattern of misuse/overuse of program benefits by a recipient. Contact with involved providers may be initiated for additional information. The medical professionals render a recommendation to place a recipient in the Physician/Pharmacy Lock-In Program or Pharmacy-Only Lock-In Program. The decision making authority rests solely with the Department of Health and Hospitals, Bureau of Health Services Financing.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1057 (June 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

### **§305. Agency Responsibilities**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1057 (June 2006), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

### **§307. Notification Directives**

A. The department's contract designee shall notify the recipient of the decision to lock-in providers and shall include the following additional information:

1. the department's intention to allow the recipient to choose one primary care provider, one pharmacy provider, and up to three specialist providers, if warranted;

2. that Medicaid will make payments only to the physician and pharmacy providers chosen by the recipient and subsequently approved by the department;

3. that the recipient is advised to contact the department's contract designee to discuss the Pharmacy Lock-In Program; and

4. that the recipient has the right to appeal the initial lock-in decision.

5. Repealed.

B. The department's contract designee shall be responsible for the following:

1. initiate contact with the recipient in instances when the recipient fails to contact the department;

2. conduct a telephone interview with the recipient regarding the Lock-In Program and the recipient's rights and responsibilities;

3. assist the recipient, if necessary, in exercising due process rights and complete the appropriate forms at the initial contact; and

4. notify lock-in providers of their selection.

C. - D. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1057 (June 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

### **§309. Restrictions**

A. Recipients shall be prohibited from choosing physicians and pharmacists who overprescribe or oversupply drugs. When the agency cannot approve a recipient's choice of provider(s), the lock-in recipient shall be required to make another selection.

1. In order to be approved as a Lock-In provider, the physician or pharmacy shall accept Medicaid as reimbursement for services rendered. Recipients are prohibited from paying cash for services rendered.

B. A recipient loses freedom of choice of providers once the lock-in decision has been made. Only the initial lock-in decision can be appealed. Provider selection is not appealable.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1057 (June 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

### **§311. Appeals**

A. Administration Reconsideration. A recipient may request an administrative reconsideration of the department's determination to place the recipient in the Lock-In Program. An administrative reconsideration is an informal telephone discussion among the Bureau of Health Services Financing staff, the DHH contract designee, and the recipient. An explanation of the reason for recommending the recipient to be placed in the Lock-In Program will be provided to the recipient. An administrative reconsideration is not in lieu of the administrative appeals process and does not extend the time limits for filing an administrative appeal under the provisions of the Administrative Procedure Act. The designated official shall have the authority to affirm the decision, to revoke the decision, to affirm part or revoke in part, or to request additional information from either the department or the recipient.

B. Administrative Appeal Process. Upon notification of DHH's determination to place the Medicaid recipient into the Lock-In Program, the recipient shall have the right to appeal such action by submitting a written request to the Division of Administrative Law within 30 days of said notification. If an appeal is timely made, the decision to Lock-In is stayed pending the hearing of the appeal.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1057 (June 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

**§313. Changing Lock-In Providers**

A. Recipients may change lock-in providers every year without cause. With good cause, they may change lock-in providers only with the bureau's approval. Recipients may change providers for the following "good cause" reasons:

1. a recipient relocates;
2. a recipient's primary diagnosis changes;
3. ...
4. the lock-in provider(s) stop(s) participating in the Medicaid Program and does not accept Medicaid as reimbursement for services.

a. The recipient may still receive other program services available through Medicaid such as hospital, transportation, etc., which are not controlled or restricted by placing a recipient in lock-in for pharmacy and physician services. No recipient on lock-in status shall be denied the service of a physician or pharmacist on an emergency basis within program regulations. In instances in which a recipient is referred by his lock-in physician to another enrolled Medicaid physician who is accepting Medicaid recipients, reimbursement shall be made to the physician to whom the recipient was referred.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1058 (June 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

**§315. Recipient Profile Review**

A. Recipients profiles are to be reviewed periodically as described in the Lock-In Procedure Manual (for determination of continuance or discontinuance of lock-in). The department's medical designee(s) examine(s) a recipient's profile for a continued pattern of misuse or overuse of program benefits. Periods of ineligibility for Medicaid will not affect the lock-in status of the individual. A review at the end of the first four months of ineligibility of lock-in closure will be made to determine if lock-in should be continued. Based upon a recommendation of the department's medical designee, a decision may be made to restore unrestricted benefits and appropriate notification will be provided to the recipient.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1058 (June 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

**Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule has no impact on family functioning, stability or autonomy as described in R.S. 49:972.

**Public Comments**

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule.

**Public Hearing**

A public hearing on this proposed Rule is scheduled for Wednesday, September 28, 2011 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Bruce D. Greenstein  
Secretary

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

**RULE TITLE: Pharmacy Benefits Management  
Program—Lock-In Program**

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

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 11-12. It is anticipated that \$1,230 (\$615 SGF and \$615 FED) will be expended in FY 11-12 for the state's administrative expense for promulgation of this proposed rule and the final rule. The Department anticipates that the current administrative contract associated with the Pharmacy Benefits Management Program will not increase as a result of the shift in administrative functions resulting from this proposed rule.

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

It is anticipated that the implementation of this proposed rule will not affect revenue collections other than the federal share of the promulgation costs for FY 11-12. It is anticipated that \$615 will be collected in FY 11-12 for the federal share of the expense for promulgation of this proposed rule and the final rule.

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

This proposed rule amends the provisions governing the Pharmacy Benefits Management Program in order to revise and clarify the provisions governing the Pharmacy Lock-In Program. It is anticipated that implementation of this proposed rule will not have economic cost or benefits to directly affected persons or non-governmental groups for FY 11-12, FY 12-13, and FY 13-14.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Don Gregory  
Medicaid Director  
1108#079

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office



## NOTICE OF INTENT

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

#### Pharmacy Benefits Management Program Prescription Limit Reduction (LAC 50:XXIX.113)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:XXIX.113 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

As a result of a budgetary shortfall in state fiscal year 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing prescription limits in the Pharmacy Benefits Management Program to reduce the number of prescriptions covered by the Medicaid Program within a calendar month for certain recipients (*Louisiana Register*, Volume 35, Number 9).

Due to a budgetary shortfall in state fiscal year 2011, the department promulgated an Emergency Rule which amended the provisions governing the Pharmacy Benefits Management Program to further reduce the number of prescriptions covered by the Medicaid Program within a calendar month (*Louisiana Register*, Volume 37, Number 2). This proposed Rule is being promulgated to continue the provisions of the February 1, 2011 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

#### Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part XXIX. Pharmacy

#### Chapter 1. General Provisions

#### §113. Prescription Limit

A. Effective February 1, 2011, the Department of Health and Hospitals will pay for a maximum of four prescriptions per calendar month for Medicaid recipients.

B. The following federally mandated recipient groups are exempt from the four prescriptions per calendar month limitation:

1. persons under 21 years of age;
2. persons who are residents of long-term care institutions, such as nursing homes and ICF-DD facilities; and

3. pregnant women.

C. The four prescriptions per month limit can be exceeded when the prescriber determines an additional prescription is medically necessary and communicates the following information to the pharmacist in his own handwriting or by telephone or other telecommunications device:

1. "medically necessary override;" and

2. a valid ICD-9-CM, or its successor, diagnosis code that is directly related to each drug prescribed that is over the four prescription limit (no ICD-9-CM, or its successor, literal description is acceptable).

D. The prescriber should use the Clinical Drug Inquiry (CDI) internet web application developed by the fiscal intermediary in his/her clinical assessment of the patient's disease state or medical condition and the current drug regime before making a determination that more than four prescriptions per calendar month is required by the recipient.

E. ...

F. An acceptable statement and ICD-9-CM, or its successor, diagnosis code is required for each prescription in excess of four for that month.

G. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1055 (June 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1901 (September 2009), LR 37:

#### Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule may have an adverse impact on family functioning, stability and autonomy as described in R.S. 49:972 in that it may be necessary for individuals and families to use their own funds or to rely on others in order to purchase medications in excess of the reduced prescription limit.

#### Public Comments

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule.

#### Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, September 28, 2011 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Bruce D. Greenstein  
Secretary

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

**RULE TITLE: Pharmacy Benefits Management  
Program Prescription Limit Reduction**

**NOTICE OF INTENT**

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

**Pregnant Women Extended Services  
Dental Services Reimbursement Rate Reduction  
(LAC 50:XV.16107)**

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

It is anticipated that the implementation of this proposed rule will result in estimated state general fund programmatic savings of \$939,610 for FY 11-12, \$954,117 for FY 12-13 and \$982,741 for FY 13-14. It is anticipated that \$410 (\$205 SGF and \$205 FED) will be expended in FY 11-12 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 69.34 percent in FY 12-13. The enhanced rate of 69.78 percent for the last nine months of FY 12 is the federal rate for disaster-recovery FMAP adjustment states.

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

It is anticipated that the implementation of this proposed rule will reduce federal revenue collections by approximately \$2,125,260 for FY 11-12, \$2,203,121 for FY 12-13 and \$2,269,215 for FY 13-14. It is anticipated that \$205 will be expended in FY 11-12 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 69.34 percent in FY 12-13. The enhanced rate of 69.78 percent for the last nine months of FY 12 is the federal rate for disaster-recovery FMAP adjustment states.

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

This proposed rule, which continues the provisions of the February 1, 2011 emergency rule, amends the provisions governing prescription limits in the Pharmacy Benefits Management Program to reduce the number of prescriptions covered by the Medicaid Program from 5 to 4 prescriptions within a calendar month for certain recipients. It is anticipated that implementation of this proposed rule will decrease programmatic expenditures in the Medicaid Program by approximately \$3,065,280 for FY 11-12, \$3,157,238 for FY 12-13 and \$3,251,956 for FY 13-14.

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

It is anticipated that the implementation of this proposed rule will not have an effect on competition. However, we anticipate that the implementation may have a negative effect on employment as it may reduce the payments made to some providers of pharmacy services. The reduction in payments may adversely impact the financial standing of providers and could possibly cause a reduction in employment opportunities.

Don Gregory  
Medicaid Director  
1108#085

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:XV.16107 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq.

As a result of a budgetary shortfall in state fiscal year 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for dental services to reduce the reimbursement rates for services rendered to Medicaid eligible pregnant women (*Louisiana Register*, Volume 36, Number 9).

As a result of a budgetary shortfall in state fiscal year 2011, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for dental services to reduce the reimbursement rates for services rendered to Medicaid eligible pregnant women (*Louisiana Register*, Volume 36, Number 8). The August 1, 2010 Emergency Rule was amended to revise the formatting of LAC 50:XV.16107 as a result of the promulgation of the September 20, 2010 final Rule governing the Pregnant Women Extended Services Dental Program (*Louisiana Register*, Volume 36, Number 11).

Due to a continuing budgetary shortfall, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for dental services rendered to Medicaid eligible pregnant women to further reduce the reimbursement rates (*Louisiana Register*, Volume 37, Number 1). This proposed Rule is being promulgated to continue the provisions of the November 20, 2010 and the January 1, 2011 Emergency Rules.

## Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part XV. Services for Special Populations

##### Subpart 13. Pregnant Women Extended Services

##### Chapter 161. Dental Services

##### §16107. Reimbursement

A. - D.3.q. ...

E. Effective for dates of service on or after August 1, 2010, the reimbursement fees for dental services provided to Medicaid eligible pregnant women shall be reduced to the following percentages of the 2009 National Dental Advisory Service Comprehensive Fee Report 70th percentile, unless otherwise stated in this Chapter:

1. 69 percent for the comprehensive periodontal evaluation exam;

2. 65 percent for the following diagnostic services:

- a. intraoral-periapical first film;
- b. intraoral-periapical, each additional film; and
- c. panoramic film and prophylaxis, adult; and

3. 58 percent for the remaining diagnostic services and all periodontic procedures, restorative and oral and maxillofacial surgery procedures which includes the following dental services:

- a. intraoral, occlusal film;
- b. bitewings, two films;
- c. amalgam (one, two or three surfaces) primary or permanent;
- d. amalgam (four or more surfaces);
- e. resin-based composite (one, two or three surfaces), anterior;
- f. resin-based composite (four or more surfaces) or involving incisal angle, anterior;
- g. resin-based composite crown, anterior;
- h. resin-based composite (one, two, three, four or more surfaces), posterior;
- i. prefabricated stainless steel crown, primary or permanent tooth;
- j. prefabricated resin crown;
- k. periodontal scaling and root planning (four or more teeth per quadrant);
- l. full mouth debridement to enable comprehensive evaluation and diagnosis;
- m. extraction, coronal remnants-deciduous tooth;
- n. extraction, erupted tooth or exposed root (elevation and/or forceps removal);
- o. surgical removal of erupted tooth requiring elevation of mucoperiosteal flap and removal of bone and/or section of tooth;
- p. removal of impacted tooth, soft tissue; and
- q. removal of impacted tooth, partially bony.

F. Effective for dates of service on or after January 1, 2011, the reimbursement fees for dental services provided to Medicaid eligible pregnant women shall be reduced to the following percentages of the 2009 National Dental Advisory Service Comprehensive Fee Report 70th percentile, unless otherwise stated in this Chapter:

1. 67.5 percent for the comprehensive periodontal evaluation exam;

2. 63.5 percent for the following diagnostic services:

- a. intraoral-periapical first film;

- b. intraoral-periapical, each additional film; and
- c. panoramic film and prophylaxis, adult; and

3. 57 percent for the remaining diagnostic services and all periodontic procedures, restorative and oral and maxillofacial surgery procedures which includes the following dental services:

- a. intraoral, occlusal film;
- b. bitewings, two films;
- c. amalgam (one, two or three surfaces) primary or permanent;
- d. amalgam (four or more surfaces);
- e. resin-based composite (one, two or three surfaces), anterior;
- f. resin-based composite (four or more surfaces) or involving incisal angle, anterior;
- g. resin-based composite crown, anterior;
- h. resin-based composite (one, two, three, four or more surfaces), posterior;
- i. prefabricated stainless steel crown, primary or permanent tooth;
- j. prefabricated resin crown;
- k. periodontal scaling and root planning (four or more teeth per quadrant);
- l. full mouth debridement to enable comprehensive evaluation and diagnosis;
- m. extraction, coronal remnants-deciduous tooth;
- n. extraction, erupted tooth or exposed root (elevation and/or forceps removal);
- o. surgical removal of erupted tooth requiring elevation of mucoperiosteal flap and removal of bone and/or section of tooth;
- p. removal of impacted tooth, soft tissue; and
- q. removal of impacted tooth, partially bony.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:434 (March 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1902 (September 2009), amended LR 36:2044 (September 2010), LR 37:

##### Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule may have an adverse impact on family functioning, stability and autonomy as described in R.S. 49:972 in the event that provider participation in the Medicaid Program is diminished as a result of reduced reimbursement rates.

##### Public Comments

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule.

##### Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, September 28, 2011 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an

opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Bruce D. Greenstein  
Secretary

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

**RULE TITLE: Pregnant Women Extended Services  
Dental Services Reimbursement Rate Reduction**

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

It is anticipated that the implementation of this proposed rule will result in estimated state general fund programmatic savings of \$59,112 for FY 11-12, \$60,303 for FY 12-13 and \$62,112 for FY 13-14. It is anticipated that \$574 (\$287 SGF and \$287 FED) will be expended in FY 11-12 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 69.34 percent in FY 11-12. The enhanced rate of 69.78 percent for the last nine months of FY 12 is the federal rate for disaster-recovery FMAP adjustment states.

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

It is anticipated that the implementation of this proposed rule will reduce federal revenue collections by approximately \$134,049 for FY 11-12, \$139,244 for FY 12-13 and \$143,421 for FY 13-14. It is anticipated that \$287 will be expended in FY 11-12 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 69.34 percent in FY 11-12. The enhanced rate of 69.78 percent for the last nine months of FY 12 is the federal rate for disaster-recovery FMAP adjustment states.

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

This proposed rule, which continues the provisions of the November 20, 2010 and the January 1, 2011 emergency rules, amends the provisions governing the reimbursement methodology for dental services provided to Medicaid eligible pregnant women in order to reduce the reimbursement rates. It is anticipated that implementation of this proposed rule will reduce programmatic expenditures in the Medicaid Program by approximately \$193,735 for FY 11-12, \$199,547 for FY 12-13 and \$205,533 for FY 13-14.

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

It is anticipated that the implementation of this proposed rule will not have an effect on competition. However, we anticipate that the implementation may have a negative effect on employment as it will reduce the payments made to dental providers. The reduction in payments may adversely impact the financial standing of these providers and could possibly cause a reduction in employment opportunities.

Don Gregory  
Medicaid Director  
1108#084

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Rural Health Clinics  
Hospital-Based Rural Health Clinics  
Wrap-Around Payments (LAC 50:XI.16705)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:XI.16705 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq.

In compliance with the directives of Act 327 of the 2007 Regular Session of the Louisiana Legislature, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for small rural hospitals in order to revise the payment methodology governing state fiscal year 2009 Medicaid payments, including payments to hospital-based rural health clinics (*Louisiana Register*, Volume 35, Number 5). The department now proposes to amend the provisions of the May 20, 2009 Rule to allow hospital-based rural health clinic reimbursements to continue at existing levels after the implementation of Coordinated Care Networks on January 1, 2012.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part XI. Clinic Services**

**Subpart 15. Rural Health Clinics**

**Chapter 167. Reimbursement Methodology  
§16705. Hospital-Based Rural Health Clinics**

A. - A.3. ...

B. Effective for dates of service on or after January 1, 2012, payments to rural health clinics that are licensed as part of a small rural hospital as of July 1, 2007 shall be calculated as follows.

1. The Medicaid Benefits Improvement and Protection Act of 2000 (BIPA) prospective payment system (PPS) per visit rate for each qualifying hospital-based rural health clinic shall be communicated to all coordinated care network prepaid risk bearing managed care organization (CCN-P) models that are approved by the department.

2. Final reimbursement shall be the greater of either the BIPA PPS payments or the alternative payment of 110 percent of allowable costs as determined per the annual Medicaid cost report. If the 110 percent of Medicaid allowable cost is greater than the BIPA rate, the difference shall be reimbursed to the small rural hospital's rural health clinic as a wrap around payment. The wrap-around payment for each hospital-based rural health clinic shall be the annual aggregate of this differential for all Medicaid CCN-P rural health clinic services.

3. The payment methodology in §16705.B.1-3 shall be contingent upon the approval of the corresponding Medicaid State Plan amendment by the Centers for Medicare and Medicaid Services (CMS). In the event that CMS does

not render its approval, the aggregate differential shall be reimbursed either as a Medicaid supplemental payment utilizing the allowable upper payment limit for fee-for-service and coordinated care network fee-for-service with shared savings (CCN-S) models' Medicaid rural health clinic services or as a Medicaid disproportionate share hospital adjustment payment.

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

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:957 (May 2009), amended LR 37:

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

#### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact upon family functioning, stability and autonomy as described in R.S. 49:972.

#### **Public Comments**

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821—9030. He is responsible for responding to inquiries regarding this proposed Rule.

#### **Public Hearing**

A public hearing on this proposed Rule is scheduled for Wednesday, September 28, 2011 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Bruce D. Greenstein  
Secretary

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

#### **RULE TITLE: Rural Health Clinics**

#### **Hospital-Based Rural Health Clinics Wrap-Around Payments**

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

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 11-12. It is anticipated that \$328 (\$164 SGF and \$164 FED) will be expended in FY 11-12 for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will not affect revenue collections other than the federal share of the promulgation costs for FY 11-12. It is anticipated that \$164 will be collected in FY 11-12 for the federal share of the expense for promulgation of this proposed rule and the final rule.

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

This proposed rule adopts provisions that will allow hospital-based rural health clinic reimbursements to continue at existing rates (FY 2011 payment amounts) after the implementation of Coordinated Care Networks on January 1, 2012. It is anticipated that implementation of this proposed rule will have no effect on persons or non-governmental groups in FY 11-12, FY 12-13 and FY 13-14.

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

This rule has no known effect on competition and employment.

Don Gregory  
Medicaid Director  
1108#083

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

### **NOTICE OF INTENT**

#### **Department of Natural Resources Office of Conservation**

Fees (LAC 43:XIX.701, 703, and 707)

Pursuant to power delegated under the laws of the state of Louisiana, and particularly Title 30 of the Louisiana Revised Statutes of 1950, as amended, the Office of Conservation proposes to amend LAC 43:XIX.701, 703, and 707 (Statewide Order No. 29-R) in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. The proposed action will adopt Statewide Order No. 29-R-11/12 (LAC 43:XIX, Subpart 2, Chapter 7), which establishes the annual Office of Conservation Fee Schedule for the collection of Application, Production, and Regulatory Fees, and will replace the existing Statewide Order No. 29-R-10/11.

#### **Title 43**

#### **NATURAL RESOURCES**

#### **Part XIX. Office of Conservation—General Operations Subpart 2. Statewide Order No. 29-R**

#### **Chapter 7. Fees**

#### **§701. Definitions**

*Application Fee*—an amount payable to the Office of Conservation, in a form and schedule prescribed by the Office of Conservation, by industries under the jurisdiction of the Office of Conservation.

*Application for Automatic Custody Transfer*—an application for authority to measure and transfer custody of liquid hydrocarbons by the use of methods other than customary gauge tanks, as authorized by Statewide Order No. 29-G-1 (LAC 43:XVII.2301 et seq.), or successor regulations.

*Application for Commercial Class I Injection Well*—an application to construct and/or operate a commercial Class I injection well, as authorized by Statewide Order No. 29-N-1 (LAC 43:XVII.101 et seq.), Statewide Order No. 29-N-2 (LAC 43:XVII.201 et seq.), or successor regulations.

*Application for Commercial Class I Injection Well (Additional Wells)*—an application to construct and/or operate additional Class I injection wells within the same filing, as authorized by Statewide Order No. 29-N-1 (LAC 43:XVII.101 et seq.), Statewide Order No. 29-N-2 (LAC 43:XVII.201 et seq.), or successor regulations.

*Application for Commercial Class II Injection Well*—an application to construct and/or operate a commercial Class II injection well, as authorized by Statewide Order No. 29-B (LAC 43:XIX.401 et seq.), Statewide Order No. 29-M-2 (LAC 43:XVII.3101 et seq.), or successor regulations.

*Application for Commercial Class II Injection Well (Additional Wells)*—an application to construct and/or operate additional Class II injection wells within the same filing, as authorized by Statewide Order No. 29-B (LAC 43:XIX.401 et seq.), Statewide Order No. 29-M-2 (LAC 43:XVII.3101 et seq.), or successor regulations.

*Application for Multiple Completion*—an application to multiple complete a new or existing well in separate common sources of supply, as authorized by Statewide Order N. 29-C-4 (LAC 43:XIX.1301 et seq.), or successor regulations.

*Application for Non commercial Injection Well*—an application to construct and/or operate a Class I, II, III, or V noncommercial injection well, as authorized by Statewide Order Nos. 29-B (LAC 43:XIX.401 et seq.), 29-M (LAC 43:XVII.301 et seq.), 29-N-1 (LAC 43:XVII.101 et seq.), 29-N-2 (LAC 43:XVII.201 et seq.), 29-M-2 (LAC 43:XVII.3101 et seq.), successor regulations.

*Application for Permit to Drill (Minerals)*—an application to drill in search of minerals (six-months or one-year), as authorized by R.S. 30:28.

*Application for Public Hearing*—an application for a public hearing as authorized by R.S.30:1 et seq.

*Application for Site Clearance*—an application to approve a procedural plan for site clearance verification of platform, well or structure abandonment developed by an operator/lessee and submitted to the Commissioner of Conservation, as authorized by LAC 43:XI.311 et seq., or successor regulations.

*Application for Substitute Unit Well*—an application for a substitute unit well as authorized by Statewide Order No. 29-K-1 (LAC 43:XIX.2901 et seq.), or successor regulations.

*Application for Surface Mining Development Operations Permit*—an application to remove coal, lignite, or overburden for the purpose of determining coal or lignite quality or quantity or coal or lignite mining feasibility, as authorized by Statewide Order No. 29-O-1 (LAC 43:XV.101 et seq.), or successor regulations.

*Application for Surface Mining Exploration Permit*—an application to drill test holes or core holes for the purpose of determining the location, quantity, or quality of a coal or lignite deposit, as authorized by Statewide Order No. 29-O-1 (LAC 43:XV.101 et seq.), or successor regulations.

*Application for Surface Mining Permit*—an application for a permit to conduct surface coal or lignite mining and reclamation operations, as authorized by Statewide Order No. 29-O-1 (LAC 43:XV.101 et seq.), or successor regulations.

*Application for Unit Termination*—an application for unit termination as authorized by Statewide Order No. 29-L-3 (LAC 43:XIX.3100 et seq.), or successor regulations.

*Application to Amend Permit to Drill (Injection or Other)*—an application to alter, amend, or change a permit to drill, construct and/or operate an injection, or other well after its initial issuance, as authorized by R.S. 30:28.

*Application to Amend Permit to Drill (Minerals)*—an application to alter, amend, or change a permit to drill for

minerals after its initial issuance, as authorized by R.S. 30:28.\*

\*Application to amend operator (transfer of ownership, including any other amendment action requested at that time) for any orphaned well, any multiply completed well which has reverted to a single completion, any non-producing well which is plugged and abandoned within the time frame directed by the commissioner, as well as any stripper crude oil well or incapable gas well so certified by the Department of Revenue shall not be subject to the application fee provided herein.

*Application to Commingle*—an application for authority to commingle production of gas and/or liquid hydrocarbons and to use methods other than gauge tanks for allocation, as authorized by Statewide Order No. 29-D-1 (LAC 43:XIX.1500 et seq.), or successor regulations.

*Application to Process Form R-4*—application for authorization to transport oil from a lease as authorized by Statewide Order No. 25 (LAC 43:XIX.900 et seq.), or successor regulations.

*BOE*—annual barrels oil equivalent. Gas production is converted to BOE by dividing annual mcf by a factor of 16.0.

*Capable Gas*—natural and casing head gas not classified as incapable gas well gas or incapable oil well gas by the Department of Revenue, as of December 31, 2010.

*Capable Oil*—crude oil and condensate not classified as incapable oil or stripper oil by the Department of Revenue, as of December 31, 2010.

*Class I Well*—a Class I injection well used to inject hazardous or nonhazardous, industrial, or municipal wastes into the subsurface, which falls within the regulatory purview of Statewide Order No. 29-N-1 (LAC 43:XVII.101 et seq.), Statewide Order No. 29-N-2 (LAC 43:XVII.201 et seq.), or successor regulations.

*Class I Well Fee*—an annual fee payable to the Office of Conservation, in a form and schedule prescribed by the Office of Conservation, on Class I wells in an amount not to exceed \$400,000 for Fiscal Year 2000-2001 and thereafter.

*Class II Well*—a Class II injection well which injects fluids which are brought to the surface in connection; with conventional oil or natural gas production, for annular disposal wells, for enhanced recovery of oil or natural gas, and for storage of hydrocarbons. For purposes of administering the exemption provided in R.S. 30:21(B)(1)(c), such exemption is limited to operators who operate Class II wells serving a stripper oil well or an incapable gas well certified pursuant to R.S. 47:633 by the Severance Tax Section of the Department of Revenue and located in the same field as such Class II well.

*Class III Well*—a Class III injection well which injects for extraction of minerals or energy.

*Emergency Clearance*—emergency authorization to transport oil from lease.

*Production Fee*—an annual fee payable to the Office of Conservation, in a form and schedule prescribed by the Office of Conservation, by oil and gas operators on capable oil wells and capable gas wells based on a tiered system to establish parity on a dollar amount between the wells. The tiered system shall be established annually by rule on capable oil and capable gas production, including nonexempt wells reporting zero production during the annual base period, in an amount not to exceed \$2,450,000 for Fiscal Year 2002/2003 and thereafter.

*Production Well*—any well which has been permitted by and is subject to the jurisdiction of the Office of Conservation, excluding wells in the permitted and drilling in progress status, Class II injection wells, liquid storage cavity wells, commercial salt water disposal wells, Class V injection wells, wells which have been plugged and abandoned, wells which have reverted to landowner for use as a fresh water well (Statewide Order No. 29-B, LAC 43:XIX.137.G or successor regulations), multiply completed wells reverted to a single completion, and stripper oil wells or incapable oil wells or incapable gas wells certified by the Severance Tax Section of the Department of Revenue, as of December 31, 2010.

*Regulatory Fee*—an amount payable annually to the Office of Conservation, in a form and schedule prescribed by the Office of Conservation, on Class II wells, Class III wells, storage wells, Type A facilities, and Type B facilities in an amount not to exceed \$875,000 for Fiscal Year 2000-2001 and thereafter. No fee shall be imposed on a Class II well of an operator who is also an operator of a stripper crude oil well or incapable gas well certified pursuant to R.S. 47.633 by the Severance Tax Section of the Department of Revenue as of December 31, 2010, and located in the same field as such Class II well. Operators of Record, excluding operators of wells and including, but not limited to, operators of gasoline/cycling plants, refineries, oil/gas transporters, and/or certain other activities subject to the jurisdiction of the Office of Conservation are required to pay an annual registration fee of \$105. Such payment is due within the time frame prescribed by the Office of Conservation.

*Type A Facility*—commercial E&P waste disposal facilities within the State that utilize technologies appropriate for the receipt, treatment, storage, or disposal of oilfield waste solids and liquids for a fee or other consideration, and fall within the regulatory purview of Statewide Order No. 29-B (LAC 43:CIC.501 et seq.), Statewide Order No. 29-M-2 (LAC 43:XVII.3101 et seq.), or successor regulations.

*Type B Facility*—commercial E&P waste disposal facilities within the State that utilize underground injection technology for the receipt, treatment, storage, or disposal of only produced saltwater, oilfield brine, or other oilfield waste liquids for a fee or other consideration, and fall within the regulatory purview of Statewide Order No. 29-B (LAC 43:XIX.501 et seq.), or successor regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:542 (August 1988), amended LR 15:551 (July 1989), LR 21:1249 (November 1995), LR 24:458 (March 1998), LR 24:2127 (November 1998), LR 25:1873 (October 1999), LR 26:2302 (October 2000), LR 27:1919 (November 2001), LR 28:2366 (November 2002), LR 29:2499 (November 2003), LR 31:2950 (November 2005), LR 32:2087 (November 2006), LR 33:2462 (November 2007), LR 34:2404 (November 2008), LR 35:2463 (November 2009), LR36:2567(November 2010), LR 37:

**§703. Fee Schedule for Fiscal Year 2010-2011**

A. Fee Schedule

Application Fees	Amount
Application for Unit Termination	\$252
Application for Substitute Unit Well	\$252

Application Fees	Amount
Application for Public Hearings	\$755
Application for Multiple Completion	\$126
Application for Commingle	\$252
Application for Automatic Custody Transfer	\$252
Application for Noncommercial Injection Well	\$252
Application for Commercial Class I Injection Well	\$1,264
Application for Commercial Class I Injection Well (Additional Wells)	\$631
Application for Commercial Class II Injection Well	\$631
Application for Commercial Class II Injection Well (Additional Wells)	\$314
Application for Permit to Drill – Minerals: 0’ – 3,000’(6 months)	\$126
Application for Permit to Drill – Minerals: 3,001’ – 10,000’(6 months)	\$631
Application for Permit to Drill – Minerals: 10,001’ +(6 months)	\$1,264
Drill Minerals Deeper (> 3,000’) (6 months)	\$504
Drill Minerals Deeper (> 10,000’) (6 months)	\$632
Application for Permit to Drill - Minerals: 0’ - 3,000’ (1 year)	\$252
Application for Permit to Drill - Minerals: 3,001’ - 10,000’ (1 year)	\$1,262
Application for Permit to Drill - Minerals: 10,001’ + (1 year)	\$2,528
Drill Minerals Deeper (> 3,000’) (1 year)	\$1,008
Drill Minerals Deeper (> 10,000’) (1 year)	\$1,264
Application to Amend Permit to Drill – Minerals	\$126
Application to Amend Permit to Drill – Injection or Other	\$126
Application for Surface Mining Exploration Permit	\$65
Application for Surface Mining Development Operations Permit	\$94
Application for Surface Mining Permit	\$2,212
Application to Process Form R-4	\$36
Application to Reinstate Suspended Form R-4	\$65
Application for Emergency Clearance Form R-4	\$65
Application for Site Clearance	\$600

B. Regulatory Fees

1. Operators of each permitted Type A Facility are required to pay an annual Regulatory Fee of \$6,798 per facility.

2. Operators of each permitted Type B Facility are required to pay an annual Regulatory Fee of \$3,399 per facility.

3. Operators of record of permitted non-commercial Class II injection/disposal wells are required to pay \$689 per well.

4. Operators of record of permitted Class III and Storage wells are required to pay \$689 per well.

C. Class I Well Fees. Operators of permitted Class I wells are required to pay \$10,958 per well.

D. Production Fees. Operators of record of capable oil wells and capable gas wells are required to pay according to the following annual production fee tiers.

Tier	Annual Production (Barrel Oil Equivalent)	Fee (\$ per Well)
Tier 1	0	16
Tier 2	1 - 5,000	87
Tier 3	5,001 - 15,000	248
Tier 4	15,001 - 30,000	414
Tier 5	30,001 - 60,000	653
Tier 6	60,001 - 110,000	905
Tier 7	110,001 - 9,999,999	1,120

### E. Exceptions

1. Operators of record of each Class I injection/disposal well and each Type A and B commercial facility that is permitted, but has not yet been constructed, are required to pay an annual fee of 50 percent of the applicable fee for each well or facility.

2. Operators of record of each inactive Type A and B facility which have voluntarily ceased the receipt and disposal of E&P waste and are actively implementing an Office of Conservation approved closure plan are required to pay an annual Regulatory Fee of 50 percent of the annual fee for each applicable Type A or B facility.

3. Operators of record of each inactive Type A or B facility which have voluntarily ceased the receipt and disposal of E and P waste, have completed Office of Conservation approved closure activities and are conducting a post-closure maintenance and monitoring program, are required to pay an annual Regulatory Fee of 25 percent of the annual fee for each applicable Type A or B facility.

### F. Pipeline Safety Inspection Fees

1. Owners/Operators of jurisdictional gas pipeline facilities are required to pay an annual gas pipeline safety inspection fee of \$22.40 per mile, or a minimum of \$400, whichever is greater.

2. Owners/Operators of jurisdictional hazardous liquids pipeline facilities are required to pay an annual hazardous liquids pipeline safety inspection fee of \$22.40 per mile, or a minimum of \$400, whichever is greater.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq., R.S. 30:560 and 706.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:543 (August 1988), amended LR 15:552 (July 1989), LR 21:1250 (November 1995), LR 24:458 (March 1998), LR 24:2128 (November 1998), LR 25:1874 (October 1999), LR 26:2304 (October 2000), LR 27:1920 (November 2001), LR 28:2368 (November 2002), LR 29:350 (March 2003), LR 29:2501 (November 2003), LR 30:2494 (November 2004), LR 31:2950 (November 2005), LR 32:2088 (November 2006), LR 33:2462 (November 2007), LR 34: 2404 (November 2008), LR 35:2463 (November 2009), LR36: 2567(November 2010), LR 37:

### §705. Failure to Comply

A. Operators of operations and activities defined in §701 are required to timely comply with this Order. Failure to comply by the due date of any required fee payment will subject the operator to civil penalties provided in Title 30 of the Louisiana Revised Statutes of 1950, including but not limited to R.S. 30:18.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:544 (August 1988), amended LR 15:552 (July 1989), LR 21:1251 (November 1995), LR 24:459 (March 1998), LR 24:2128 (November 1998), LR 25:1874 (October 1999), LR 26:2304 (October 2000), LR 27:1921 (November 2001), LR 28:2368 (November 2002), LR 29:2501 (November 2003), LR 34:2406 (November 2008), LR 36:2569 (November 2010), LR 37:

### §707. Severability and Effective Date

A. The fees set forth in §703 are hereby adopted as individual and independent rules comprising this body of rules designated as Statewide Order No. 29-R-11/12 and if any such individual fee is held to be unacceptable, pursuant

to R.S. 49:968(H)(2), or held to be invalid by a court of law, then such unacceptability or invalidity shall not affect the other provisions of this order which can be given effect without the unacceptable or invalid provisions, and to that end the provisions of this order are severable.

B. This Order (Statewide Order No. 29-R-11/12) supersedes Statewide Order No. 29-R-10/11 and any amendments thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:544 (August 1988), amended LR 15:552 (July 1989), LR 21:1251 (November 1995), LR 24:459 (March 1998), LR 24:2128 (November 1998), LR 25:1874 (October 1999), LR 26:2305 (October 2000), LR 27:1921 (November 2001), LR 28:2368 (November 2002), LR 29:2502 (November 2003), LR 30:2494 (November 2004), LR 31:2950 (November 2005), LR 32:2088 (November 2006), LR 33: 2462 (November 2007), LR 34: 2404(November 2008), LR 35:2463 (November 2009), LR36: 2567(November 2010), LR 37:

### Family Impact Statement

In accordance with RS 49:972, the following statements are submitted after consideration of the impact of the proposed Rule on family as defined therein.

1. The proposed Rule will have no effect on the stability of the family.

2. The proposed Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The proposed Rule will have no effect on the functioning of the family.

4. The proposed rules will have no effect on family earnings and family budget.

5. The proposed rules will have no effect on the behavior and personal responsibility of children.

6. The proposed rules will have no effect on the ability of the family or local government to perform any function as contained in the proposed rules.

### Public Comments

Comments and views regarding the proposed fees will be accepted until 4:30 p.m., Friday, September 30, 2011. Comments should be directed, in writing, to Todd Keating, Director, Engineering Division, Office of Conservation, P.O. Box 94275, Capitol Station, Ninth Floor, Baton Rouge, LA 70804-9275 (Re: Docket No. 11-197 Proposed Statewide Order No. 29-R-11/12).

### Public Hearing

A public hearing will be held at 9 a.m., Tuesday, September 27, 2011, in the LaBelle Hearing Room, located on the First Floor, LaSalle Building, 617 North Third Street, Baton Rouge, LA.

James H. Welsh  
Commissioner

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Fees

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

There are no implementation costs (savings) to state or local governmental units resulting from this action.



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

Proposed Statewide Order No. 29-R-11/12 establishes the Louisiana Office of Conservation Fee Schedule for the collection of application, production, and regulatory fees by the Office of Conservation and will replace the existing Statewide Order No. 29-R-10/11 and will retain the maximum revenue caps authorized in R.S. 30:1 et seq., R.S. 30:21, R.S. 30:560, and R.S. 30:706 provide that the Commissioner of Conservation shall periodically and/or annually review the fees collected, and the Office of Conservation has established a practice of annually evaluating all applicable fees. The Production Tier Fee in the FY11/12 Fee Schedule has been decreased an average 11.73 percent overall due to the increased number of participating wells. The Regulatory Fees for Class I Injection Wells have been decreased an average 1.38 percent due to the increase in the number of wells; and, the Regulatory Fees for Class II and III Injection Wells, and Type A and B Commercial Facilities have decreased by approximately 2.10 percent due to the increased number of wells and facilities. The Office of Conservation will collect approximately \$7,636,058.50 in revenue for these fees in FY11/12. This represents a \$34,086.69 increase from FY10/11.

Additionally, the passage of Act Nos. 222 and 223 of the 2004 Regular Legislative Session, authorizes the Office of Conservation to determine by rule annually, in accordance with the Administrative Procedure Act, the pipeline safety inspection fees charged for the approximately 45,564 miles of state regulated jurisdictional gas distribution and gas transmission pipelines (R.S. 30:560) and approximately 5,314 miles of state jurisdictional hazardous liquids pipelines (R.S. 30:706). The Office of Conservation is authorized to collect a "fee not to exceed \$22.40 per mile, or a minimum of \$400, whichever is greater" for these state jurisdictional gas and hazardous liquids pipelines. The proposed FY 11/12 fee will remain at the maximum fee authorized by statute. These fees are used as the matching funding for the Pipeline Safety Program's Federal Grants. The Office of Conservation is projected to collect approximately \$1,168,472 for the pipeline safety inspection fees in FY11/12. This represents a \$3,797.12 decrease from FY10/11.

No local governmental units will be impacted by this action.

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

The proposed rule will replace the existing Office of Conservation Fee Schedule. The proposed Statewide Order No. 29-R-11/12 will retain the existing revenue caps for fees assessed to industries under the jurisdiction of the Office of Conservation, as authorized by R.S. 30:21 et seq., R.S. 30:560, and R.S. 30:706, and is expected to reach approximately \$8,804,530.50 for FY11/12.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The passage of Statewide Order No. 29-R-11/12 will have no effect on competition and employment.

Gary P. Ross  
Assistant Commissioner  
1108#046

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Natural Resources  
Office of Conservation  
Environmental Division**

**Water Well Construction—Location  
(LAC 56:I.321)**

The Louisiana Office of Conservation proposes to amend LAC 56:I.Chapter 3, Section 321 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the power delegated under the laws of the State of Louisiana. The proposed amendment will require protective corner posts around certain drilling rig supply water wells.

**Title 56**

**PUBLIC WORKS**

**Part I. Water Wells**

**Chapter 3. Water Well Construction**

**§321. Location in Relation to Buildings and Other Structures**

A. A well shall be located far enough from a building to allow reworking or rehabilitation with a drilling rig. A well shall not be located below ground surface, such as in pits and basements, and shall not be located within the foundation of a building, except a building constructed solely to house pumping and water system equipment.

B. For drilling rig supply wells, if the well is located on the constructed work pad for drilling operations or within the ring levee system, it must be surrounded with four protective corner posts. If the well is located outside the ring levee system and will be transferred for some other future use or will not be plugged and abandoned within six months of completion of associated oil and gas well drilling activity, it must be surrounded by four protective corner posts. The corner posts shall be constructed of four inch diameter metal pipe not less than schedule 40 and shall be concreted below the ground surface not less than four feet and shall extend above the ground surface not less than three feet.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3091-R.S. 38:3098.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 1:249 (May 1975), amended LR 11:954 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), LR 37:

**Family Impact Statement**

In accordance with RS 49:972, the following statements are submitted after consideration of the impact of the proposed Rule amendments at LAC 56:I.Chapter 1 on family as defined therein.

1. The proposed Rule amendment will have no effect on the stability of the family.

2. The proposed Rule amendment will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The proposed Rule amendment will have no effect on the functioning of the family.

4. The proposed Rule amendment will have no effect on family earnings and family budget.

5. The proposed Rule amendment will have no effect on the behavior and personal responsibility of children.

6. Family or local government are not required to perform any function contained in the proposed Rule amendment.

#### **Small Business Statement**

In accordance with R.S. 49:965.6, the Department of Natural Resources, Office of Conservation has determined that these amendments will have no estimated effect on small businesses other than the cost of approximately \$500 per well to companies that construct drilling rig supply wells as more specifically addressed in the Fiscal and Economic Impact Statement.

#### **Public Comments**

All interested parties will be afforded the opportunity to submit data, views, or arguments, orally or in writing at the public hearing in accordance with R.S. 49:953. Written comments will be accepted until 4:30 p.m., October 3, 2011, at Office of Conservation, Environmental Division, P.O. Box 94275, Baton Rouge, LA, 70804-9275; or Office of Conservation, Environmental Division, 617 North Third St., Room 817, Baton Rouge, LA 70802. Reference Docket No. ENV 2011-12 on all correspondence. All inquiries should be directed to John Adams at the above addresses or by phone to 225-342-7889. No preamble was prepared.

#### **Public Hearing**

The Commissioner of Conservation will conduct a public hearing at 9 a.m., September 26, 2011, in the LaBelle Room located on the first floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA.

James H. Welsh  
Commissioner

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Water Well Construction—Location**

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

There are no estimated implementation costs or savings to state or local governmental units. *Louisiana Administrative Code*, Title 56:I.Section 321(B) is being added to address safety concerns regarding drilling rig supply water wells in which as a result of heavy equipment which is commonly used in the vicinity of said wells, the frequency of damage to the well providing an opportunity for fluids commonly associated with the exploration and production of oil and gas wells to migrate down into the water well and contaminate the aquifer is increased. Requiring protective corner posts provides a line of defense to prevent damage to the water well.

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

There is no anticipated 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)**

Certain drilling rig supply wells will now be required to be constructed with protective posts on each corner. Water well

contractors who do not construct drilling rig supply wells will not be affected by this provision. Reviewing the drilling history over the past ten years, an average of 670 wells per year are drilled that could be affected by this provision. Based on an estimated materials cost of \$200 for the protective piping, \$100 for cement and \$200 for labor, the total estimated cost per well would be \$500, making the total impact on this industry as a whole approximately \$335,000 per year.

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

There is no estimated effect on competition and employment as a result of this rule change.

Gary P. Ross  
Assistant Commissioner  
1108#047

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

### **NOTICE OF INTENT**

#### **Department of Natural Resources Office of Conservation Environmental Division**

#### **Water Well Registration, Construction and Closure (LAC 56:I.Chapters 1, 3, 5 and 7)**

The Louisiana Office of Conservation proposes to amend LAC 56:I.Chapters 1, 3, 5 and 7 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the power delegated under the laws of the state of Louisiana. The proposed amendment will address numerous typographical changes and rule clarifications necessary as a result of Act 437 of 2009 which transferred duties and responsibilities relative to ground water resources, water wells and drillers from the Department of Transportation and Development, Office of Public Works to the Department of Natural Resources, Office of Conservation.

#### **Title 56**

#### **PUBLIC WORKS**

#### **Part I. Water Wells**

#### **Chapter 1. Registering Water Wells**

#### **§101. Authorization**

A. - B. ...

C. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3091-38:3098.8.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 1:249 (May 1975), amended LR 11:950 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 37:906 (March 2011), LR 37:

#### **§105. Registration of Water Wells and Holes**

#### **Completed on or after November 1, 1985**

A. - G.1. ...

2. If an unregistered well is reworked, deepened or changed in any manner or if screen setting is altered, the proper registration form (DNR-GW-1 or DNR-GW-1S) shall be submitted to the department by the contractor no later than 30 calendar days after the work has been completed. Failure to file the proper registration form may result in enforcement actions including the assessment of civil

penalties in accordance with the authority of the commissioner of Conservation.

H. - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3091-38:3098.8.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 1:249 (May 1975), amended LR 11:950 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 37:906 (March 2011), LR 37:

**§113. Definitions**

A. ...

\*\*\*

*Free Flowing Water Well*—an artesian well which flows, under natural conditions, at or above the ground surface.

\*\*\*

*Relief Well*—any well drilled for the sole purpose of relieving the hydrostatic pressure inside a levee system during times of high water.

\*\*\*

*Test Hole*—a temporary exploratory borehole drilled for the sole purpose of obtaining geologic, hydrologic and water quality data.

\*\*\*

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3098 -38:3098.8.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways, LR 1:969 (May 1975), amended LR 11:969 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 37:907 (March 2011), LR 37:

**Chapter 3. Water Well Construction**

**§301. Preamble**

A. As announced in the October 1985 issue of the *Louisiana Register*, the rules, regulations and standards for constructing water wells and holes were prepared by the Louisiana Department of Transportation and Development (DOTD), Office of Public Works, in accordance with R.S. 38:3091 through 38:3098.8. Effective January 1, 2010, in accordance with Act 437 of 2009, The Department of Natural Resources, Office of Conservation, hereafter referred to as *department*, is responsible for registering water wells and holes in Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3091-R.S. 38:3098.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 1:249 (May 1975), amended LR 11:952 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 37:909 (March 2011), LR 37:

**§305. Approval of Plans and Specifications for Public Water Supply Systems**

A. - B.Note. ...

C. In accordance with these legislative directives, the rules, regulations and standards governing construction of

public supply water wells were prepared by the DOTD in close cooperation with the Louisiana Department of Health and Hospitals, Office of Public Health (LDHH-OPH), and they are intended to eliminate duplication of efforts and requirements by the two agencies, thereby minimizing cost and optimizing operating efficiencies.

D. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3091-R.S. 38:3098.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 1:249 (May 1975), amended LR 11:952 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 37:909 (March 2011), LR 37:

**§307. Licensing Requirements**

A. - B. ...

C. Drillers operating in the state of Louisiana should, as a best management practice, carry minimum coverage for liability insurance for drilling operations engaged by their company.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3091-R.S. 38:309.8.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 1:249 (May 1975), amended LR 11:953 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 37:

**§313. Minimum Distance Requirements for Locating a Water Well**

A. Provided that all other applicable rules and regulations are complied with, the minimum distance requirements for locating a water well shall be in accordance with the following Sections.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3091-R.S. 38:309.8.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 1:249 (May 1975), amended LR 11:953 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 37:

**§315. Location in Relation to Possible Sources of Contamination**

A. The horizontal distance between any water well and any possible sources of contamination shall be as great as possible but in no case less than the following minimum distances.

Possible Sources of Contamination	Minimum Distance (in feet)
Septic Tanks	50
Storm or Sanitary Sewer	50 <sup>1</sup>
Cesspools, outdoor privies, oxidation ponds, subsurface absorption fields, pits, etc.	100 <sup>2</sup>
Sanitary landfills, feed lots, manure piles, solid-waste dumps and similar installations	100
Another water well	25 <sup>3</sup>
Drainage canal, ditch, stream, pond or lake	50 <sup>4</sup>

Possible Sources of Contamination	Minimum Distance (in feet)
<sup>1</sup> This distance may be reduced to 30 feet if the sewer is of cast iron with leaded joints or schedule 40 plastic pipe with water-tight joints.	
<sup>2</sup> For domestic water wells, this distance may be reduced to 50 feet.	
<sup>3</sup> This minimum distance requirement does not take into consideration the effects of interference from pumping nearby wells in the same aquifer.	
<sup>4</sup> Horizontally measured from the water edge to the well at the highest water level which may have occurred in a 10 year period.	

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3091-R.S. 38:309.8.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 1:249 (May 1975), amended LR 11:953 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 37:

**§317. Location in Relation to Levees**

A. Wells or holes as defined in Part I, except relief wells, shall not be drilled within 250 feet of the levees [R.S. 38:225(6)]. The department interprets this statute to mean that the well or wells shall be at least 250 feet from the land side toe of the levee. For this agency to consider any exception to the above, written approval from the appropriate local authorities such as levee boards or the Corps of Engineers is necessary and should be submitted with the variance request.

B. ...

C. Requirements for relief wells located within 250 feet from the land side toe of the levee include:

1. Written approval from the Corps of Engineers and the local levee authority, if applicable, and;
2. Minimum construction standards for grouting down to at least 10 feet from the ground surface and a one-way check valve.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3091-R.S. 38:309.8.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 1:249 (May 1975), amended LR 11:953 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 37:

**§319. Location in Relation to Flood Water**

A. Locations subject to flooding should be avoided, if possible. If a reasonable alternate site does not exist, the well may be constructed in flood-prone areas provided the top of the casing is at least 2 feet above the highest flood level which may have occurred in a 10-year period but in no case less than 2 feet above the ground surface, except when located in coastal areas along the Gulf of Mexico prone to direct impact of storm surge events. Wells with a casing size of 4 inches or less located in coastal areas prone to direct impact of storm surge events shall be constructed with:

1. well casing material strength of S/40 PVC or greater and a maximum casing height of 24 inches above ground surface;
2. protective casing material strength of S/80 PVC or greater with a diameter size providing a minimum 3 inch space between the well casing outer diameter and the outer diameter of the protective casing;

3. protective casing height of 20 to 22 inches above ground surface and a minimum depth below ground surface to 38 inches or greater;

4. spacing between the protective casing and the well casing filled with Portland cement; and

5. grouting down to a depth of at least 50 feet below ground surface.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3091-R.S. 38:3098.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 1:249 (May 1975), amended LR 11:953 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 37:910 (March 2011), LR 37:

**§323. Drilling and Construction**

A. - C.2. ...

3. record any unusual occurrences, such as loss of circulation, cave-ins, etc., (In the event the unusual occurrence is observable evidence of naturally occurring methane gas, natural gas or similar sub-surface gas, such as bubbling drilling mud or gas venting at the well bore or other nearby surface location or feature, the contractor shall report such event verbally to the Environmental Division of the Office of Conservation within twenty-four hours); and

C.4. - J.1.c. ...

2. During the drilling operation, the contractor shall take the necessary precautions to prevent the contamination of any aquifer and the exchange of waters between aquifers.

J.3. - P. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3091-R.S. 38:309.8.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 1:249 (May 1975), amended LR 11:954 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 37:910 (March 2011), LR 37:

**§325. Casing**

A. - F.4. ...

G. Casing Wall Thickness and Diameters

1. The pipe shall have a standard dimension ratio (SDR) of 26, 21, or 17, and shall be equivalent to at least Schedule 40 or 80, depending upon use, construction techniques, depths and strength requirements.

G.2. - H.1. ...

2. The well casing pipe, couplings, cement, primer and other compounds shall be evaluated and listed as conforming with both ANSI/NSF Standard 14 and ANSI/NSF Standard 61.

3. The pipe shall be marked with the nominal size standard dimension ratio or schedule, type of material, either the designation "PVC 1120" or "PVC 1220", the wording "well casing", designation "ASTM F-480", manufacturers name or trademark, and the NSF-WC designation.

I. - J.4. ...

5. Exposed PVC casings shall be protected from ultra-violet degradation by appropriate coatings as recommended by the manufacturer.

K. Height of Casing. Well casing shall project at least one foot above ground level, pump-house floor, or the top of

concrete slab. For wells in areas subject to flooding, refer to §319.A. The ground surface or concrete slab around the well shall be sloped to drain away from the well in all directions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3091-R.S. 38:309.8.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 1:249 (May 1975), amended LR 11:955 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 37:

### §327. Screen

A. - B. ...

C. Screen Material. The type of screen material is generally dependent upon cost and the quality of water to be pumped. If the water contains a relatively high concentration of carbon dioxide, dissolved solids or hydrogen sulfide, corrosion-resistant materials should be used in the construction of the screen. If a corrosive environment is present, the screen should be made entirely of the same material, and the lap or extension pipe (for not less than 5 feet) above the screen and blank pipe, if used, should be made of the same material as the screen. The likelihood of corrosion and encrustation can also be decreased by maintaining the entrance velocity within acceptable limits, 0.1 foot per second or less.

D. - L. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3091-R.S. 38:3098.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 1:249 (May 1975), amended LR 11:956 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 37:910 (March 2011), LR 37:

### §329. Methods and Standards for Cementing the Annular Space

A.1. - A.2.c. ...

B. Methods for Cementing the Annular Space. The following regulations shall apply to all water wells, regardless of use or type.

1. Annular space shall be sealed with cement-bentonite slurry, which is a mixture of cement, bentonite and water, consisting of not more than 8 percent bentonite by dry weight of the cement, and a maximum of 10 gallons of water per sack (94 pounds) of cement. Additives, in the approved and proper ratio, may be added to the slurry if required. If the slurry is to be prepared in the field, it is recommended that the bentonite be added after cement and water are thoroughly mixed. Sodium bentonite with a minimum porosity of  $10^{-8}$  may also be used.

B.2. - B.6. ...

7. If one or more sands between the ground surface and the production sand contain saline water and/or water of objectionable quality, the annular space between the well casing and the hole shall be sealed with cement-bentonite slurry, at a minimum, to a depth of not less than 20 feet below the deepest sand containing the water of objectionable quality unless full depth cementing is required by §329.C.

C. - C.10. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3091-R.S. 38:309.8.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 1:249 (May 1975), amended LR 11:957 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 37:

### §331. Well Development and Disinfection

A. - D.1. ...

2. The acceptable amount of sand per unit volume should be between recommended ratios of 1 ounce of sand per 8,000 gallons of water (about 1 milligram per liter) and one ounce per 100 gallons of water (80 milligrams per liter), depending on the use of water. Because of the possibility of damage by sand to plumbing fixtures and industrial equipment and products, the tolerance for sand in water used for public supply, domestic and most industrial purposes is low and should not exceed 5 milligrams per liter. Many wells that are used for public water supply systems have an acceptable ratio of "no sand." The well owner should specify the acceptable limits of the "sand free" water with equal consideration given to the use of the water, the desired production rate, costs, and well development.

E. - F.3. ...

4. Disinfection of Wells. All new wells and existing wells in which repair work has been done shall be disinfected before being put into use, in accordance with Part XII of the State Sanitary Code (LAC 51:XII), if water is to be used for human drinking, cooking, washing or other potable purposes. Negative bacteriological analysis of water, performed by the Louisiana Department of Health and Hospitals, Office of Public Health (LDHH-OPH) or by a laboratory certified by the state health officer, shall be required for all public supply and domestic water wells.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3091-R.S. 38:309.8.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 1:249 (May 1975), amended LR 11:958 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 37:910 (March 2011), LR 37:

### §333. Standards for Miscellaneous Appurtenances

A. Vent (Breather Pipe). Vents are required for all public supply water wells and are recommended for use on wells used for other purposes. Vents shall be so constructed and installed as to prevent the entrance of contaminants into the well. Vent openings shall be piped water-tight to a point at least 2 feet above the highest flood level which may have occurred in a 10-year period, but in no case less than 1 foot above the top of the well casing. Such vent openings and extensions thereof should not be less than 1/2 inch in diameter, with extension pipe firmly attached thereto. In all cases wherein a well's casing terminates less than 2 feet above the highest flood level which may have occurred in a 10-year period (such as along coastal areas as allowed under Section 319.A), the vent pipe opening shall continue to be required to terminate at least 2 feet above the highest flood level which may have occurred in a 10-year period. The openings of the vent pipes shall be turned downward and screened to prevent the entrance of insects, foreign matter

and other contaminants. Vents will not be required when single-pipe jet pumps are used.

B. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3091-R.S. 38:3098.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 1:249 (May 1975), amended LR 11:959 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 37:910 (March 2011), LR 37:

### §335. Enforcement Actions

A. Provisions addressing enforcement of this Chapter appear in R.S. 38:3097.3, as follows.

A.1. - B.2. ...

C. The penalty provision for falsification of documents required under the provisions of this Part are therefore criminal in nature and will be enforced through the district attorney having jurisdiction where said violation occurs. It should also be noted that utilization of the United States Mail in the falsification of documents constitutes a violation of Title 18 of the United States Code (Mail Fraud), and such information will be referred to the appropriate United States attorney.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3091-R.S. 38:309.8.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 1:249 (May 1975), amended LR 11:959 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 37:

## Chapter 5. Plugging and Sealing of Abandoned Water Wells and Holes

### §501. Organization

A. ...

B. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3091-R.S. 38:3097.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 1:249 (May 1975), amended LR 11:959 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 37:911 (March 2011), LR 37:

### §505. General Rules and Regulations

A. ...

B. Accordingly, the rules, regulations and standards for plugging abandoned water wells and holes stated herein were prepared in response to this legislative directive and were developed in coordination with other state agencies that are also concerned with the protection of the water resources of the state. The regulations and standards are intended to provide for restoration, as nearly as possible, of those subsurface and surface conditions that existed prior to drilling, boring, digging or augering activities; taking into account any changes that may have occurred as a result of "natural stresses."

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3091-R.S. 38:3097.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 1:249 (May 1975), amended LR 11:960 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 37:911 (March 2011), LR 37:

### §509. Exemptions

A. The following wells and holes are exempted from the provisions of the rules, regulations and standards stated herein:

1. saline-water wells associated with secondary recovery operations;
2. brine wells;
3. oil and gas wells and holes;
4. injection wells;
5. geothermal and geopressed holes associated with production of oil and gas; and
6. waste disposal wells.

B. Although the cited activities are not covered by R.S. 38:3094, they are not exempted or excepted by state law; therefore, persons, firms, corporations or others dealing with the cited activities should contact the appropriate regulating agencies for further information and should take any and all action necessary to protect the water resources of the state from contamination. The exclusion of these activities from these regulations does not in any way remove or establish legal liability for health and safety hazards, contamination, or pollution problems alleged to be caused by persons engaged in the activities cited in Subsection A of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2091-R.S. 38:3097.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 1:249 (May 1975), amended LR 11:960 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), LR 37:

### §513. Variance Requests

Editor's Note: The telephone number listed in §513.A has been changed to (225) 274-4172.\*

A. Because of variable hydrologic conditions, differences in well construction, depth, and size, and the irregular occurrence of saltwater sands, the rules, regulations and standards stated herein cannot cover every possible situation. For cases where compliance with the rules, regulations, and standards stated in this Chapter is impractical, the owner, engineer, or the water well contractor may request a variance and/or clarification on methods specified. Such requests shall be addressed to the department as follows:

Louisiana Department of Natural Resources  
Office of Conservation  
P.O. Box 94275  
Baton Rouge, LA 70804-9275  
Phone: (225) 342-5562

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3091-R.S. 38:3097.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 1:249 (May 1975), amended LR 11:960 (October 1985), repromulgated by the Department of Transportation and

Development, Office of Public Works, LR 31:942 (April 2005), amended Department of Natural Resources, Office of Conservation, LR 37:911 (March 2011), LR 37

### **§525. Availability of Water Well Data**

A. The drilling and construction records for a water well or test hole may be obtained from the owner, from the water well contractor, and/or from the following:

Louisiana Department of Natural Resources  
Office of Conservation  
P.O. Box 94275  
Baton Rouge, LA 70804-9275  
Phone: (225) 342-8244

B. ...

C. Information on monitoring wells may be obtained from the owner, the water well contractor, the engineer, the Department of Natural Resources, as listed above, and/or from the following agency:

Department of Environmental Quality  
Galvez Bldg.  
602 North Fifth Street  
Baton Rouge, LA 70802

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3091-R.S. 38:3097.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 1:249 (May 1975), amended LR 11:961 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 37:912 (March 2011), LR 37:

### **§533. Enforcement Actions**

A. Provisions addressing enforcement of this Chapter appear in R.S. 38:3097.3, as follows:

A.1. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2091-R.S. 38:3097.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 1:249 (May 1975), amended LR 11:964 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 37:

## **Chapter 7. Installing Control Devices on Free Flowing Water Wells**

### **§701. Authorization**

A. ...

B. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3094.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 11:964 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 37:913 (March 2011), LR 37:

### **§703. Purpose**

A. The purpose of the rules and regulations, stated herein, is to conserve the ground water resources of the state by requiring that the owner install control devices on free flowing water wells (for glossary of terms, refer to §113.A of this Chapter) the owner shall install a flow control device on

each free flowing water well in accordance with the rules and regulations stated in this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3094.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 11:964 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 37:

### **§705. General Rules and Regulations**

A. The rules and regulations, stated herein, apply to all free flowing water wells. A free flowing well is an artesian well which is allowed to flow, under natural conditions, at or above the land surface.

B. Exemptions. The following water wells are exempt from the provisions of this Chapter:

1. free flowing water wells in existence prior to January 1, 2012; however, wells reworked after January 1, 2012 shall not be exempt;

2. water wells producing saline water in connection with oil and gas production.

C. Wells In a State of Disrepair or Nonuse. If a water well is in such a state of disrepair that it cannot be used and a control device cannot be installed, it shall be considered abandoned and shall be plugged by the owner in accordance with the provisions of Chapter 5 of this Part, entitled "Rules, Regulations and Standards for Plugging Abandoned Water Wells and Holes."

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3094.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 11:965 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 37:

### **§707. Responsibility of the Owner**

A. The owner shall be the party responsible for installing a flow control device on each free flowing water well.

B. The owner shall allow representatives of the department to enter the property and visit the well site to verify the installation of a control device, or inspect the completed work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3094.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 11:965 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 37:

### **§709. Responsibility of the Department**

A. At the request of a parish police jury or other governmental entity, the department may make a survey to locate and report on the location of free flowing water wells.

B. The department may enter into a financial cooperative agreement with the parish police jury or other governmental entity to have control devices installed on those free flowing water wells which produce over 25,000 gallons per day.

C. The department shall, in no way, be held responsible for a well "sanding up" or failing to yield water after a control device is installed on the well.

D. The department, upon receiving information on the existence of a free flowing water well, shall proceed as follows:

1. if a control device is required, the department will issue an order to the owner to require the installation of a control device on the well within 90 calendar days from the date of the said order. When the installation of the control device is completed, the owner shall apprise the department, in writing, within 30 calendar days after completion of work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3094.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 11:965 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 37:

#### **Family Impact Statement**

In accordance with RS 49:972, the following statements are submitted after consideration of the impact of the proposed Rule amendments at LAC 56:I.Chapter 1 on family as defined therein.

1. The proposed Rule amendment will have no effect on the stability of the family.

2. The proposed Rule amendment will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The proposed Rule amendment will have no effect on the functioning of the family.

4. The proposed Rule amendment will have no effect on family earnings and family budget.

5. The proposed Rule amendment will have no effect on the behavior and personal responsibility of children.

6. Family or local government are not required to perform any function contained in the proposed Rule amendment.

#### **Small Business Statement**

In accordance with R.S. 49:965.6, the Department of Natural Resources, Office of Conservation has determined that these amendments will have no estimated effect on small businesses.

#### **Public Comments**

All interested parties will be afforded the opportunity to submit data, views, or arguments, orally or in writing at the public hearing in accordance with R.S. 49:953. Written comments will be accepted until 4:30 p.m., October 3, 2011, at Office of Conservation, Environmental Division, P.O. Box 94275, Baton Rouge, LA, 70804-9275; or Office of Conservation, Environmental Division, 617 North Third St., Room 817, Baton Rouge, LA 70802. Reference Docket No. ENV 2011-11 on all correspondence. All inquiries should be directed to John Adams at the above addresses or by phone to 225-342-7889. No preamble was prepared.

#### **Public Hearing**

The Commissioner of Conservation will conduct a public hearing at 9 a.m., September 26, 2011, in the LaBelle Room located on the first floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA.

James H. Welsh  
Commissioner

## **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Water Well Registration, Construction and Closure**

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

There are no estimated implementation costs or savings to State or Local governmental units. This proposal amends the provisions of LAC 56:I.Chapters 1, 3, 5 and 7 to address numerous typographical changes and rule clarifications necessary as a result of Act 437 of 2009 which transferred duties and responsibilities relative to ground water resources, water wells and drillers from the Department of Transportation and Development, Office of Public Works to the Department of Natural Resources, Office of Conservation.

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

There is no anticipated 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)**

No costs and/or economic benefits are anticipated to directly affected persons or non-governmental groups.

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

There is no estimated effect on competition and employment as a result of this rule change.

Gary Ross  
Assistant Commissioner  
1108#048

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

## **NOTICE OF INTENT**

### **Department of Natural Resources Office of Mineral Resources**

Mineral Resources, Alternative Energy Leasing and Dry Hole Credit (LAC 43:I. Chapter 11 and V. Chapter 4)

Pursuant to the power delegated under the laws of the state of Louisiana and, particularly Title 30 of the Louisiana Revised Statute of 1950, as amended, and in accordance with the provisions of the Administrative Procedures Act, R.S. 49:950 et seq., the Secretary of the Department of Natural Resources hereby gives notice that rulemaking procedures have been initiated to promulgate rules for the Leasing of State Lands and Water Bottoms for the Exploration, Development and Production of Alternative Energy Sources, LAC 43:I. Chapter 11, and to repeal the Dry Hole Credit Program, LAC 43:V. Chapter 4.

The proposed regulation relative to alternative energy will detail the procedure which will be utilized in administering the leasing of state lands and water bottoms for the exploration, development and production of alternative energy, allowed for by R.S. 30:124. In addition, the repeal of the Chapter relative to the Dry Hole Credit Program will be repealed since the final date for filing applications for the credit was June 30, 2009 per Act 2005, No. 298 and Act 2009, No. 196.



Title 43  
NATURAL RESOURCES  
Part I. Office of the Secretary  
Subpart 1. General

**Chapter 11. Leasing State Owned Lands and Water Bottoms for the Exploration, Development and Production of an Alternative Energy Source**

**§1101. Authority**

A. These rules and regulations are promulgated by the state Mineral and Energy Board (Board) in consultation with the Department of Transportation and Development (DOTD) pursuant to the Administrative Procedure Act as authorized by R.S. 41:1734.

B. A Port Authority's denial of the issuance of a state alternative energy source lease (AESL) shall be adjudicated in accordance with the Administrative Procedure Act as set forth at 49:991 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1734.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

**§1102. Purpose**

A. These rules and regulations are promulgated for the following purposes:

1. to implement the provisions and intent of the legislature as set forth in Chapter 14-A of Title 41 of the Louisiana Revised Statutes of 1950;

2. to establish procedures for the issuance and administration of leases for alternative energy source production on state lands and water bottoms;

3. to notify the lessee and third parties of obligations as required in this Chapter;

4. to ensure that alternative energy source activities conducted on state lands or water bottoms for energy related purposes are implemented in a safe and environmentally sound manner, in conformance with state laws, federal laws and other applicable laws and regulations, and the terms of the Alternative Energy Source Lease.

5. To institute reasonable fees for services performed by the Department of Natural Resources (DNR).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

**§1103. Wind Energy and Geothermal Energy Alternative Energy Sources**

A. The Alternative Energy Source Rules as set forth in Chapter 11, except as provided in §1125 and §2011, do not apply to wind energy or geothermal alternative energy sources.

B. An applicant for a wind energy lease must comply with the requirements as set forth in R.S. 41:1731 et seq.

C. An applicant for a geothermal energy lease must comply with the requirements as set forth in R.S. 30:800 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1734.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

**§1104. Cash Bonus and Fees for Alternative Energy Source Leases**

A. The state shall collect a cash bonus for all AESLs. In addition to the cash bonus, the board, through the Office of Mineral Resources (OMR), shall collect an administrative fee for such leasing in the amount of 10 percent of the total cash bonus paid. Such payments shall be due within 24 hours of award of the state Alternative Energy Lease.

B. The state may collect additional payments for an Alternative Energy Source Lease if authorized by statute.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 34:260 (February 2008)

**Subchapter A. General Provision**

**§1107. Lease Authorization**

A. Except as otherwise authorized by law, it will be unlawful for any person or business entity to explore for, drill, develop, construct, operate, or maintain any facility to produce, transport, or support the generation of electricity or other energy product derived from an alternative energy source on any part of state owned lands and water bottoms except under and in accordance with the terms of a lease issued by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

**§1108. Acronyms**

A. For the purposes of this Chapter, unless the terms are defined in a different Chapter or Subpart, the following acronyms shall apply.

1. OMR—the Office of Mineral Resources serving as staff to the state Mineral and Energy Board.

2. AESL—the state Alternative Energy Source Lease.

3. DNR—the Department of Natural Resources.

4. OSL—the Office of state Lands.

5. DWF—the Department of Wildlife and Fisheries and/or the Wildlife and Fisheries Commission.

6. Board—the state Mineral and Energy Board.

7. FERC—the Federal Energy Regulatory Commission as established pursuant to 42 U.S.C. §7171.

8. AESP—a project requiring an AESL.

9. DOTD—the Department of Transportation and Development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1734.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

**§1109. Definitions**

A. For the purposes of this Chapter, unless the terms are defined in a different Chapter or Subpart, the following terms shall have the following meanings. Terms defined in a different Chapter or Section shall have the meaning as defined in that Chapter, Subpart, or Section:

*Alternative Energy Source*—an energy source other than oil, gas, and other liquid, solid, or gaseous minerals. Including, but not limited to, wind energy, geothermal energy, solar energy, and hydrokinetic energy. It shall not

include the cultivation or harvesting of biomass fuels or the use of state land or water bottoms for facilities which utilize biomass fuel to produce energy.

*Archaeological Resource*—any material remains of human life or activities that are at least 50 years of age and that are of archaeological interest (i.e., capable of providing scientific or humanistic understanding of past human behavior, cultural adaptation, or related topics through the application of scientific or scholarly techniques, such as controlled observation, contextual measurement, controlled collection, analysis, interpretation, and explanation).

*Best Available and Safest Technology*—the best available and safest technologies recognized within the respective industry, or by government, feasible wherever failure of equipment would have a significant affect on safety, health, or the environment.

*Best Management Practices*—practices recognized within the respective industry, or by government, as one of the best for achieving the desired output while reducing undesirable outcomes.

*Commercial Activities*—any and all activities associated with the generation, storage, or transmission of electricity or any other energy product from a project requiring an AESL (hereinafter referred to as “AESL”) on state lands or water bottoms, when such electricity or other energy product is intended for distribution, sale, or other commercial use, including, but not limited to, initial site characterization and assessment, facility construction, and project decommissioning.

*Decommissioning*—the removal of alternative energy source facilities or any other activity associated with the return of the lease site to a condition pursuant to the requirements of Subpart E of this Chapter. Excluded from this provision are technology-testing activities.

*Interstate Commerce*—any commercial transaction involving more than one state or the movement of goods with respect to the electric power and energy across state boundaries.

*Intrastate Commerce*—any commercial transaction or movement of goods with respect to the electric power and energy wholly within the state.

*Interstate Transmission*—the generation of electric power used for the transmission of electric energy in interstate commerce.

*Intrastate Transmission*—the generation of electric power used for the transmission of electric energy in intrastate commerce.

*Lease Applicant*—a person or business entity who is formally seeking an AESL in which the port; harbor and terminal district; or port, harbor, and terminal district has not granted prior written approval for the development of an alternative energy source.

*Legal Area*—state lands or water bottoms subject to a compromise agreement or legal adjudication.

*Lessee*—the holder of an AESL granted by the board, including any approved sub-lessee, assignee, or successor, or any person or business entity authorized by the holder of the lease or operator to conduct activities on the lease.

*Levee District*—defined pursuant to the definition set forth in R.S. 38:281(6).

*Marine*—the physical, atmospheric, and biological components, conditions, and factors that interactively determine the productivity, state, condition, and quality of the marine ecosystem. These include the waters of the high seas, the contiguous zone, transitional and intertidal areas, salt marshes, and wetlands within the coastal zone and in the state.

*Operator*—the individual, business, or other legal entity having control or management of activities on the leased acreage, including, but not limited to, the lessee or a third party designated by the lessee.

*Political Subdivision*—defined pursuant to the definition set forth in R.S. 42:1102(17).

*Port Authority*—the governing authority of any port; harbor and terminal district; or port, harbor, and terminal district.

*Revenue*—a bonus or other similar payment owed and/or paid by the lessee to the lessor as required under the lease. It does not include administrative fees such as those assessed for cost recovery, civil penalties, and forfeiture of financial assurance.

*Riverine*—relating to or situated on a river or riverbank.

*Secretary*—the Secretary of the Department of Natural Resources (DNR) or an official authorized to act on the Secretary’s behalf.

*Significant Archaeological Resource*—an archaeological resource that is eligible to be listed in the National Register of Historic Places, as defined in 36 CFR 60.4 or its successor.

*Site Assessment Activity*—preliminary activity(ies) performed by the lessee for the purpose of characterizing a site on state lands or water bottoms, in preparation of the installation of facilities. Such activities may include, but are not limited to, resource assessment surveys (e.g., meteorological and oceanographic) or technology testing.

*State*—the state of Louisiana, its subdivisions, agencies, departments, successors, predecessors, legal representatives, officers, agents, employees, and any other party or entity authorized to act on its behalf.

*State Agency*—defined pursuant to the definition set forth in R.S. 30:151.

*Vessel*—defined pursuant to the definition set forth in USC Title 1, Section 3.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

## **§1110. Rights Granted Pursuant to an Alternative Energy Source Lease**

A. A lease issued under this Section grants the lessee the right, subject to obtaining the necessary approvals, including, but not limited to, those required under the Federal Energy Regulatory Commission (FERC) hydrokinetic energy licensing process, and complying with all provisions of this Section, to occupy, and install and operate facilities on a designated portion of state owned lands or water bottoms for the purpose of conducting:

1. commercial activities related to the production of energy from an alternative energy source;

2. other limited activities that support, result from, or relate to the production of energy from an alternative energy source.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1111. Impediment to Louisiana's Waterways**

A. The AESP shall not adversely impact, impede, obstruct, or interfere with transportation infrastructures, the navigability of any waterway, or the use of the waterway by other users, nor shall it unreasonably interfere with maritime commerce or the recreational use of the waterway.

B. The AESP shall be designed to have minimum impact on the chemical, physical, biological integrity, and safety of the waterway.

C. The DOTD shall review the AESP to identify any adverse impacts the AESL will have on transportation and transportation infrastructures and submit its findings to the board prior to the opening of the AESL bid. Failure by DOTD to submit its findings to the board shall indicate to the board that the AESP has no adverse impact on transportation and transportation infrastructures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1112. Port Authority Approval Required**

A. No AESL which affects the following state owned lands and/or water bottoms shall be advertised or granted without prior written approval of a Port Authority:

1. lands held in title by a Port Authority or held by lease or servitude by a Port Authority;

2. public navigable waters that flow through any lands within the jurisdiction of a Port Authority. Approval pursuant to this Section shall not be unreasonably withheld unless the lease is detrimental to the needs of commerce and navigation.

B. No Port Authority shall receive compensation for its approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1113. Decision of Port Authority**

A. After the decision of the Port Authority has been made to either grant or deny the applicant's lease request, the board, through OMR, shall notify the AESL applicant of the Port Authority's decision via certified U. S. Postal Service First Class Mail, return receipt requested.

B. If the AESL request is denied by the Port Authority, the applicant shall have 60 days from receipt of the board notice to request an administrative hearing with the Division of Administrative Law, pursuant to Chapter 13-B, Title 49 of the Louisiana Revised Statutes of 1950 and Chapter 11.

C. The Port Authority shall contract with the Division of Administrative Law to conduct the administrative hearing.

D. The Port Authority which did not grant prior written approval for the proposed AESL shall have the burden of proof at the administrative hearing that the proposed AESL is detrimental to the needs of commerce and navigation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1114. Federal Regulatory Commission**

A. No AESL for hydrokinetic energy development shall be granted which is inconsistent with the terms of a preliminary permit, license, exemption, or other authorization issued by FERC pursuant to its authority under the Federal Power Act, 16 U.S.C. 791a, et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1115. Federal and State Laws**

A. The lessee, including successors and assigns, is subject to all applicable laws, statutes, rules, or regulations, whether state or federal, which deal with the subject matter of the lease during the term the AESL is in force and effect, whether in whole or in part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1116. Alternative Energy Source Project Design Safeguards**

A. The lessee or operator shall design its AESP and conduct all activities in a manner that ensures safety and which will not cause undue harm or damage to any structures and/or natural resources, physical, atmospheric, and biological components, including, but not limited to, those owned by the state, Port Authority, Political Subdivision, or Levee District.

B. The lessee and/or operator shall compile, retain, and make available to the board, DOTD, affected Port Authority, and Levee District, or its authorized representative, within the time specified by the board, any data or information related to the site assessment, design, or operations of the alternative energy source.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1117. Rights Granted and/or Denied by an Alternative Energy Source Lease**

A. No AESL shall include any rights to explore, drill, mine, develop, or produce for native oil, gas, or other liquid or gaseous hydrocarbons.

B. No usage of state lands or water bottoms for the development of a specific alternative energy source shall unreasonably interfere, as determined by the board, with the rights of oil and gas or other forms of an AESL.

C. The AESL shall not inhibit any activity, right, obligation or duty inherent to an oil and gas lease granted by the board.

D. The AESL shall not prevent the letting of leases of state owned lands or water bottoms for the purpose of developing its natural resources.

E. Notwithstanding any language of the AESL to the contrary, the rights granted exclusively to the alternative energy source lessee shall be subject to the surface usage for coastal restoration, reclamation or conservation projects promulgated, funded or effected through DNR and its divisions, whether solely or in conjunction with other state, local or federal governmental agencies or with private

individuals or entities. The alternative energy source lessee, in the exercise of its exclusive rights granted pursuant to the AESL, shall utilize the best available technology so as to minimize interference with any surface usage entailed in the development, construction, and maintenance of coastal restoration, reclamation, and conservation projects.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1118. Environmental Safeguards**

A. The lessee shall use the best management practice, the highest degree of care, the best available and safest technology and all proper safeguards required to prevent land or water pollution resulting from the construction, transportation, and operations of an alternative energy source.

B. The lessee shall use all means available to recapture escaped pollutants and shall be solely responsible for any and all damages to aquatic or marine or riverine life, wildlife, birds, or any public or private property resulting from the lessee's operations.

C. The lessee shall not discharge trash or debris into state waterways.

D. The lessee shall report all unpermitted discharges of pollutants in violation of federal or state laws to the Department of Environmental Quality, the board, through OMR, and any other appropriate agency, within the time required by federal, state or local laws, but not more than 24 hours from the occurrence, whichever is earlier.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1119. Adherence to Laws and Regulations**

A. The lessee shall comply with all applicable environmental laws and regulations and any other federal, state, or local law, regulation, standard, or resolution passed by the board, which may be applicable to alternative energy source activities. The board may require lessee to obtain any environmental or other permits or licenses required before applying for an AESL.

B. The board shall have the option of terminating the AESL agreement should the lessee fail to abide by such rules, regulations and resolutions; provided, however, the board shall give the lessee written notice of any such violation and 10 days in which to correct such violation, in which event, should said violation not be corrected, the board, without further notice, may terminate the AESL agreement.

C. With respect to violations of rules, regulations, or resolutions of the federal government or its agencies, when the state is notified of a violation by the lessee, the board, through OMR, shall notify the lessee and may suspend operations under the AESL agreement while allowing the lessee a reasonable set time to resolve the issues with the appropriate federal authority, and, if resolution is not obtained in a reasonable time, terminate the AESL agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1120. Alternative Energy Source Lease Size**

A. The board shall determine the size of each lease based on the acreage required to accommodate the anticipated activities. The AESL shall include the minimum area that will allow the lessee sufficient space to develop the AESP and manage activities in a manner that is consistent with the provisions of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1121. Construction and Operations Plan (COP)**

A. In accordance with the requirements of this Chapter, all AESL applicants must submit to the board, or its authorized representative, a Construction and Operations Plan (COP). The COP shall describe the proposed construction, operations, and conceptual decommissioning plans under the AESL, and shall:

1. describe all planned facilities the lessee will construct and use for the AESP, including onshore and support facilities;

2. describe all proposed activities, including the proposed construction activities, commercial operations, and conceptual decommissioning plans for all planned facilities, including onshore and support facilities;

3. certify that the AESP conforms to all applicable laws, implementing regulations, lease provisions, and stipulations or conditions;

4. certify that the AESP does not cause undue harm or damage to natural resources; life (including human and wildlife); property; the marine, coastal, riverine, or human environment; or sites, structures, or objects of historical or archaeological significance;

5. Certify that the AESP does not adversely impact, interfere or impede the navigability of waterways nor interfere with the dredging or maintenance of a waterway for navigation purposes.

6. certify that the AESP does not adversely impact, interfere or impede other users of a waterway;

7. certify and demonstrate as needed that the AESP uses the best management practices and the best available and safest technology;

8. provide a detailed explanation showing how the AESP will not damage state owned lands and water bottoms and public or private property such as bridges, docks, and piers;

9. provide a detailed explanation of the waterway marking system that the lessee shall install to aid navigation by marking obstructions in the navigable waters of the state.

B. The board, through OMR, shall review the COP submitted by the lease applicant to determine if the COP contains all the required information. Additional information may be requested if it is determined that the information provided is not complete. If the lease applicant fails to provide the requested information, the AESL application may be denied.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1122. Navigation Aid**

A. The alternative energy source lessee shall construct, maintain, and operate at its own expense such lights and

signals as may be directed by either FERC or the secretary of the department in which the Coast Guard is operating, and as may be required by the Port Authority or DOTD. The Port Authority or DOTD may only impose stricter navigation aid standards than those required by FERC or the Coast Guard.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1123. State Indemnity**

A. The alternative energy source lessee shall defend, indemnify and hold harmless the state (and its designated officials) against any expenses, losses, costs, damages, claims (including, without limitation, claims for loss of life or illness to persons, or for damage to property), actions, proceedings, or liabilities of any kind, character or type arising out of or in any way connected to the AESL agreement as allowed by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1124. Easements and Rights-of-Way**

A. The lessee shall be responsible for securing authorization, easements, rights-of-way, leases or permission necessary to obtain access to state lands or water bottoms. The AESL agreement shall not provide access to any waterway.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1125. Notification Requirements**

A. The lessee shall notify the board in writing within five business days after the lessee files any action alleging insolvency or bankruptcy.

B. The lessee shall notify the board, through OMR, in writing within 30 days of any merger, name change, or change of address and contact information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **Subpart B. Lease Administration**

#### **§1129. Overview of an Alternative Energy Source Lease Acquisition Process**

A. Leases for the exploration, development and/or production of an alternative energy source on state lands or water bottoms under Chapter 14-A of Title 41 of the Louisiana Revised Statutes of 1950 shall be acquired from the board, through OMR, through a public bid process as set forth in this Chapter or as designated in a separate alternative energy source Subpart. The general steps in the AESL acquisition process are as follows:

1. registration;
2. pre-nomination requirements;
3. nomination of state lands or water bottoms for an AESL;
4. examination and evaluation of the nomination;
5. advertisement of state tract(s) offered for an AESL, including a request for bids and/or comments;
6. submission of bids on a state tract for an AESL;
7. examination and evaluation of bids for an AESL;

8. award of an AESL;

9. issuance and execution of an AESL.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1130. Registration**

A. All persons or business entities applying for an AESL shall register with the board, through OMR, prior to submitting an application and, thereafter, renew their registration annually by January 31.

B. Registration consists of submitting a completed official Prospective Leaseholder Registration Form (obtainable from the board, through OMR,) and appropriate documentation from the Louisiana Secretary of State's Office to the board, through OMR, as follows:

1. Individual/Sole Proprietorship—no additional documents required.

2. Corporation—Louisiana Secretary of State "Detailed Record" webpage indicating good standing status.

3. Limited Liability Company—Louisiana Secretary of State "Detailed Record" webpage indicating good standing status.

4. Partnership—Louisiana Secretary of State "Detailed Record" webpage indicating active status.

C. If a current alternative energy source lessee fails to renew its annual registration, the board may levy liquidated damages of \$100 per day until the unregistered lessee is properly registered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1131. Pre-Nomination Requirements**

A. Prior to any nomination of state lands or water bottoms for an AESL, the nominating party shall:

1. conduct research prior to nomination to determine and confirm that the state land or water bottoms are available for the AESL and are claimed by the state;

2. provide a copy of the compromise instrument(s), or judgment(s) that establish(es) the state ownership interest, if the state lands or water bottoms include a legal area;

3. certify that the user(s) of any active or non-released land use agreement granted by the state on nominated land or water bottoms has been notified of the proposed AESL;

4. provide an affidavit, in authentic form, attesting that:

a. there are no encumbrances, including, but not limited to, current state leases, areas nominated for lease, or pipeline rights-of-way on state lands or water bottoms.;

b. any and all users of state lands or water bottoms to be nominated for an AESL have been notified of the proposed AESL. The affidavit shall include:

i. the official name and/or number of the governing agreement;

ii. the official name of the state entity that granted the governing agreement.

5. it is the responsibility of the alternative energy source applicant to consult and coordinate with the Port Authority with jurisdiction over lands or navigable water bottoms located within, or immediately adjacent to, the proposed AESL tract. An AESL cannot be issued without the

written approval of the Port Authority with jurisdiction within the AESL area.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

### **§1132. Nomination of State Lands and Water Bottoms for an Alternative Energy Source Lease**

A. Interested, registered parties shall nominate state lands and water bottoms for an AESL by submitting a proposal (hereinafter referred to as a "nomination") by application to the board, through OMR, in the appropriate form required. Each nomination shall include the following:

1. an official letter of application;
2. any title documentation obtained by the nominating party pursuant to §1131.A;
3. a written property description of the nominated acreage including the following:
  - a. the gross acreage amount of state lands or water bottoms, inclusive of any DWF property that may be contained within the nomination area;
  - b. the net acreage amount of state lands or water bottoms, exclusive of any DWF property that may be contained within the nomination area;
  - c. the net acreage amount of any DWF property that may be contained within the nomination area;
  - d. provide the following property description for state lands and water bottoms:
    - i. use bearing, distance and X-Y coordinates based on the Louisiana Coordinate System of 1927, North or South Zone (as applicable), to accurately and clearly describe the nominated acreage. Determine whether the acreage to be nominated falls in the North Zone or the South Zone of the Louisiana Coordinate System of 1927 and provide this information in the nomination package. A single nomination may contain acreage that falls partially in the North Zone and partially in the South Zone. However, the nominated acreage shall be allocated to the zone wherein the majority of the acreage falls and use that zone's coordinates (see R.S. 50:1);
4. a plat of the nominated acreage using the most recent background imagery and using X-Y coordinates based on the Louisiana Coordinate System of 1927, North or South Zone (as applicable). Each plat shall include:
  - a. an outline of the nominated acreage with a designated point of beginning and corners using X-Y coordinates that exactly match the X-Y coordinates for the point of beginning and corners provided in the written property description, clearly labeled therein;
  - b. an outline of the state lands and/or water bottoms included within the nomination area, clearly labeled along with the amount of acreage contained therein;
  - c. an outline of any DWF property, school indemnity lands, tax adjudicated lands, vacant state lands, White Lake, or legal areas, included within the nomination area, clearly labeled along with the acreage amount contained in each;
  - d. an outline of each active or non-released land use agreement granted by the state, including, but not limited to, an AESL, state mineral lease, state operating agreement, state exclusive geophysical agreement, state non-exclusive seismic permit, state right-of-way, and/or state

surface/subsurface agreement, as well as any nomination tract approved for advertisement or advertised as offered for a state mineral lease, state operating agreement, or state exclusive geophysical agreement abutting, adjacent to, intersecting, and partially/wholly enclosed in the nomination area, clearly labeled with its official number along with the acreage amount contained therein.

- e. all water bodies, clearly labeled;
  - f. all section, township and range information;
  - g. An outline of all Port Authority in the nomination area with jurisdictional boundaries clearly delineated.
5. A summary of all environmental issues, including the potential environmental impacts resulting from the construction, operation, and placement of the alternative energy source and other facilities and equipment necessary for the exploration, development and production of an alternative energy source, and the steps proposed to minimize and mitigate the environmental impact, along with any supporting environmental impact documentation.
6. A list of governmental entities, including each federal, state, parish or local governmental entity, having jurisdiction in the nomination area, and for each, the contact person's name, title, office address, telephone and fax numbers, and email address, as well as the type of legal authority, if any, acquired or to be acquired from the governmental entity. Included in this list shall be all Port Authority districts in the nomination area with complete contact information.
7. A copy of the preliminary permit, license, exemption, or other authorization issued by FERC pursuant to its authority under the Federal Power Act, 16 U.S.C. 791a, et seq., if required.
8. A summary of the overall specified AESP, including status of site control (progress with leasing and/or permitting other properties within the entire AESP boundaries) and application process with the transmission provider, as well as a time frame for the project to become operational.
9. A summary of the alternative energy source development proposed on the state lands or water bottoms sought to be leased, including a plat, the layout of the specified alternative energy source power and transmission facilities, proposed alternative energy source equipment information (size, location, number, type and depth of installation, turbine make, and nameplate power production capacity), placement information of equipment, whether the alternative energy source will be affixed to existing platforms or state owned structures or, if there will be a necessity to construct new platforms, selection criteria used, and supporting infrastructure.
10. The status and timeline of the major milestones in the AESP development, production, and decommissioning.
11. The measures proposed to reduce risk to the state, including, but not limited to, a summary of compliance with any and all standards established by state, national and international agencies, institutes, commissions or associations and any other entity responsible for establishing the alternative energy source industry standards. Standards for the alternative energy source development/operations include, but are not limited to, turbine safety and design, power performance, noise/acoustic measurement,

mechanical load measurements, blade structural testing, power quality, and siting.

12. A summary of how the use of the state lands or water bottoms for the development and production of the alternative energy source will be coordinated with other users of the state lands or water bottoms, including the operation of ports, harbors, or terminal districts, shipping and recreational interests, dredging operations, and navigation safety.

13. A summary of contingency plans and emergency shut-down procedures to be followed, including the circumstances to initiate such procedures, in the event of danger or damage to life, water craft or facilities as a result of collision, dredging, anchorage, search and rescue operations, or unforeseen events.

14. A summary of the procedure for installation, recovery and repair of damaged turbines and equipment with minimal impact to navigation, shipping and recreational interests.

15. A summary of all study results, including copies of the complete final study reports, and all study data acquired by the applicant in a format agreeable to OMR, for all studies conducted by the applicant, for the area described in the lease application.

16. Any other information and documentation required by the board through OMR.

B. Each of the above items shall be submitted in original paper form. Additionally, a CD-ROM or DVD (hereinafter referred to as the "Nomination Disk") clearly labeled "AESL Nomination Disk" shall be submitted. Each Nomination Disk shall be affixed with the applicant and project names thereon and shall contain an electronic version of Item 3.d. above as a Word .doc file and Item 4. above as a .pdf file. Each Nomination Disk shall also contain a .dxf file which shall contain only the boundary of the nominated acreage, consisting of a single line, no additional lines, labels, text, or graphics, and shall be constructed of individual line segments between vertices. The X-Y coordinates in the .dxf file must exactly match those in the written property description and the plat.

C. The nominating party of an AESL shall observe the following restrictions:

1. Only bearing, distance and X-Y coordinates based on the Louisiana Coordinate System of 1927, North or South Zone (as applicable), shall be used and coordinates shall accurately and clearly describe the nominated acreage. If a single nomination contains acreage that is split between the North and South Zones, the nominated acreage shall be allocated to the zone containing the majority of the acreage pursuant to R.S. 50:1.

2. No more than 2,500 acres of state lands or water bottoms may be nominated in a single nomination.

D. Any other additional information required pursuant to §1121 of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

### **§1133. Examination and Evaluation of Nomination for an Alternative Energy Source Lease**

A. Upon verification by the board, through OMR, that the AESL nomination complies with legal, procedural and

technical requirements, as well as with any current policies and practices:

1. The board, through OMR, shall evaluate the AESL nomination. If the nomination is acceptable, OMR shall:

a. place the AESL nomination tract on the board Nomination and Tract Evaluation Committee Agenda for the next regular scheduled board meeting;

b. recommend to the board, pursuant to §1168, that a public bid process be conducted to advertise the nomination.

2. The board, through OMR, shall remove the acreage from commerce for the purpose of an AESL until the final outcome of the nomination is determined.

3. The board, through OMR, shall make available, after board approval, via the OMR website at [www.dnr.louisiana.gov](http://www.dnr.louisiana.gov), the nomination application as outlined in §1163.

4. The Office of State Lands (OSL), Department of Wildlife and Fisheries (DWF), and DOTD shall:

a. review the proposed location of the AESL;

b. certify to the board if there are other leases of any kind at the proposed lease location;

c. if there is an existing lease, the respective agency(ies) shall provide copies to the board of the lease(s).

5. The board, through OMR, shall transmit the nomination package and all other lease certifications to the secretary of DNR for evaluation.

B. An applicant may withdraw a nomination during the examination and evaluation process if notification is transmitted prior to the tract being officially advertised for an AESL by submitting a written request to OMR, Attention: Leasing Section, P.O. Box 2827, Baton Rouge, LA 70821-2827.

C. An applicant may not withdraw after the tract has been advertised without approval of the board. To obtain approval, the applicant shall submit a letter requesting withdrawal of the nomination to the board. If the board approves the request, the nomination fee payment shall not be refunded.

D. The decision of the Port Authority, when required in accordance with §1112 shall be submitted in written form. The Port Authority shall have 60 calendar days from the date the board approves the nomination to submit to the board, through OMR, a written decision to either grant or deny the AESL application. Failure of the Port Authority to submit a decision to the board, through OMR, within a specified time limit shall be considered a denial of the AESL application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

### **§1134. Advertisement of a State Tract Offered for an Alternative Energy Source Lease and Request for Bids**

A. The board, through OMR, shall publish an advertisement of the state tract offered for an AESL and request for bids in the official journal of the state and official journal(s) of the parish(es) where the land(s) is/are located, and, at its discretion, no less than 60 and no more than 120 days prior to the date for the public opening of bids. The advertisement shall contain the following, which shall constitute judicial advertisement and legal notice pursuant to

Chapter 5 of Title 43 of the Louisiana Revised Statutes of 1950:

1. a legal description of the nominated acreage;
2. the official tract number of the nominated acreage;
3. the gross and net amount of state lands or water bottoms nominated;

4. the date, time and place where the sealed bids will be received and publicly opened. Once a bid is submitted, it may not be withdrawn or cancelled. The board does not obligate itself to accept any bid. Bid acceptance or rejection is at the sole discretion of the board which reserves the right to reject any and all bids or to grant an AESL on any portion of state lands or water bottom tracts advertised and to withdraw the remainder of the tract.

B. All state AESLs shall be executed upon the terms and conditions provided in the current official state AESL form with any attached rider(s).

C. Notwithstanding any provisions to the contrary in any state AESL awarded or in any rider attached thereto, the lease awarded shall be granted and accepted without any warranty of title and without any recourse against the Lessor whatsoever, either expressed or implied. Further, Lessor shall not be required to return any payments received under the state AESL awarded or be otherwise responsible to the state alternative energy source lessee therefore.

D. Some tracts available for AESL may be situated in the Louisiana Coastal Zone as defined in R.S. 49:214 et seq., and may be subject to guidelines and regulations promulgated by DNR, Office of Coastal Management, for operations in the Louisiana Coastal Zone.

E. Prior to commencing construction, each state alternative energy source lessee and state AESL operator shall have a general liability insurance policy in a form acceptable to the board as set forth in Subpart D of this Chapter.

F. Prior to commencing construction, each state alternative energy source lessee and state AESL operator shall provide financial security in a form acceptable to the board as set forth in Subpart D of this Chapter.

G. Lessor excepts and reserves the full use of the leased premises and all rights with respect to surface and subsurface for any and all purposes except for those granted to the state alternative energy source lessee, including the use of the leased premises for the exploration, production and development of oil, gas and other minerals by the lessor, its mineral lessees, grantees or permittees. Co-users of the leased premises shall agree to coordinate plans and cooperate on activities to minimize interference with other operations to the extent possible.

H. To protest the board leasing of a state tract for an AESL, the protesting party shall submit a formal letter of protest to the board at least seven days prior to the scheduled board meeting to consider the AESL on the tract (generally, the lease sale date). The letter of protest shall reference the appropriate tract number, parish, and board lease sale date, as well as set forth the source and nature of the title claimed, how and when acquired, and by what legal process.

I. A party may request proof that a tract was advertised in the official state and parish journals using the official Request for Proof of Publication Form published by OMR. Proof of publication consists of certified copies of the affidavits from the official state and parish journals attesting

to publication. There is a fee of \$40 for providing proof of publication for a tract.

J. Within 20 days of the advertisement of the state tract, any person or entity may submit written comments to the board, through OMR, at the following address: Department of Natural Resources, Office of Mineral Resources, Attn: Leasing Section, P.O. Box 2827, Baton Rouge, LA 70821-2827.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

### **§1135. Submission of Bids on Tracts Offered for an Alternative Energy Source Lease**

A. Interested registered parties shall submit sealed bids on the entirety of the state tract nominated and advertised as offered for an AESL to the board, through OMR, in the form it requires by the bid submission deadline (no later than 12 p.m. Central Time on the Tuesday immediately prior to the Wednesday board lease sale at which the tracts are offered, unless otherwise noticed). Each bid shall be accompanied by any other documentation and/or information required.

B. Only those bidders who are registered prospective leaseholders with OMR as set forth under §3003 of this Chapter shall be allowed to bid on tracts for the purpose of obtaining an AESL from the state.

C. A party interested in bidding on a state tract for an AESL shall prepare a bid package that includes the items listed below. The bidder shall place all of the items required to be included in the bid package in an envelope, completely seal the envelope, write the official tract number on the outside of the envelope, and notate the following on the outside of the envelope: "Sealed Bid for State AESL is Enclosed". This envelope should include:

1. an official bid form available from OMR. Provide one original signed paper copy only;

2. a summary of experience including, at a minimum, the number of years of the bidding party's experience in the development and production of the specified alternative energy source and project descriptions. Experience with the specific AESP involving government lands and water bottoms shall be specified;

3. the proposed bid package shall set forth the following:

- a. a summary of the overall business plan of the proposed alternative energy source development, including size of operation, development costs, marketing of the project, market prices, and status of a power purchase agreement;

- b. a summary of the overall specified AESP, including status of site control (progress with leasing and/or permitting other properties within the entire AESP boundaries) and application process with the transmission provider, as well as a time frame for the project to become operational;

- c. a summary of the alternative energy source development proposed on the state lands or water bottoms sought to be leased, including a plat, the layout of the specified alternative energy source power and transmission facilities, proposed alternative energy source equipment information (size, location, number, type and depth of installation, turbine make, and nameplate power production capacity), placement information of equipment, and whether



the alternative energy source will be affixed to existing platforms or state owned structures or will there be a necessity to construct new platforms, selection criteria used, and supporting infrastructure;

d. the status and timeline of the major milestones in the AESP development, production, and decommissioning;

e. the name of the company that will operate the AESP and its relationship, if any, to the applicant;

f. a summary of the expected revenue and cash flow for the AESP on state lands or water bottoms, including a detailed list of assumptions;

g. the measures proposed to reduce risk to the state, including, but not limited to, a summary of compliance with any and all standards established by state, national and international agencies, institutes, commissions or associations and any other entity responsible for establishing the alternative energy source industry standards. Standards for the alternative energy source development/operations include, but are not limited to, turbine safety and design, power performance, noise/acoustic measurement, mechanical load measurements, blade structural testing, power quality, and siting;

h. a summary of how the AESP will ensure the viability of the state's natural resources, including, but not limited to, fish, wildlife and botanical resources, provide a continuing energy source for the citizens and businesses of Louisiana, promote economic development through job retention and creation in the state, and promote a clean and lasting environment;

i. a summary of how the use of state lands or water bottoms for the development and production of the alternative energy source will be coordinated with other users of state lands or water bottoms, including the operation of ports, harbors, or terminal districts, shipping and recreational interests, dredging operations, and navigation safety;

j. a summary of contingency plans and emergency shut down procedures to be followed, including the circumstances to initiate such procedures, in the event of danger or damage to life, water craft or facilities as a result of collision, dredging, anchorage, search and rescue operations, or unforeseen events;

k. a summary of the procedure for installation, recovery and repair of damaged turbines and equipment with minimal impact to navigation, shipping and recreational interests;

l. any other additional information required pursuant to §1121 of this Chapter;

4. a comprehensive summary of all environmental issues including, but not limited to, the environmental impact resulting from the construction, placement, operation and removal of the alternative energy source's facilities and equipment necessary for the development and production of the alternative energy source, and the steps proposed to minimize the environmental impact, along with any supporting environmental impact documentation.;

5. a list of project participants who are or will be participating in the planning, development, construction, operation, maintenance, remediation, and/or decommission phases of the proposed project, and a brief description of each participant's role;

6. a summary of project financing which shall include, at a minimum, identification of the sources of financing and a discussion of financing;

7. a list of governmental entities, including each federal, state, parish and local governmental entity having jurisdiction in the nomination area, including the name of the contact person, his/her title, office address, telephone and fax numbers, and email address, as well as the type of legal authority, if any, acquired or to be acquired from the governmental entity;

8. a summary of all study results, including copies of the complete final study reports and all study data acquired by the applicant, in a format agreeable to OMR, for all studies conducted by the applicant, for the area described in the lease application;

9. a summary detailing the project's impact and mitigation required to protect the historical and archaeological resources of the area.

D. The applicant shall deliver the sealed bid package to the board, through OMR, by either hand-delivery or traceable delivery service. The sealed bid package must be physically in the possession of appropriate OMR personnel by the bid submission deadline (generally no later than 12 p.m. Central Time on the Tuesday immediately prior to the Wednesday board lease sale at which the tracts are offered unless otherwise noticed).

E. Once a bid is submitted, it may not be withdrawn or cancelled. The board is not obligated to accept a bid. Bid acceptance or rejection is at the sole discretion of the board who reserves the right to reject any and all bids or to grant an AESL on any portion of the state tract advertised and to withdraw the remainder of the tract.

F. When two or more parties submit a joint bid, the parties shall designate the undivided percent interest of each party on the official bid form. The interests, so designated, shall be stipulated in any lease that may be awarded. Failure to designate the undivided percent interest of each joint bidder shall result in the board assigning equal interests to each bidder.

G. When two or more parties submit a joint bid, the parties shall designate on the official bid form, as well as on a separate form, the name of the principal AESL lessee, who shall be authorized to act on behalf of all co-lessees, including, but not limited to, the authority to release. The principal AESL lessee shall be stipulated in any lease that may be awarded.

H. A bid for an AESL shall exclude all rights not specifically granted in any AESL subsequently awarded.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

### **§1136. Protest of an Alternative Energy Source Lease**

A. If a party wants to protest the issuance of an AESL for a state tract, the party shall submit a formal letter of protest to the board at least seven days prior to the board's scheduled meeting to consider the AESL on the tract (generally, the lease sale date). The letter of protest shall reference the appropriate tract number, parish, and board lease sale date, as well as set forth the source and nature of the title claimed, how and when acquired, and by what legal process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

**§1137. Examination and Evaluation of Bids for an Alternative Energy Source Lease**

A. Sealed bids for a state AESL shall be publicly opened and read aloud on the date advertised for the public opening of bids (generally, the lease sale date at which the tract is offered) in the LaBelle Room, also known as the Conservation and Mineral Resources Hearing Room, located on the first floor of the LaSalle Building at 617 North Third Street, Baton Rouge, LA. The board shall defer action on the bids for the AESL until completion of the pending examination and evaluation of the bids by its staff, but no more than 120 calendar days after the opening of the bid. The board staff shall examine and evaluate the bids to confirm compliance with legal, procedural and technical requirements, as well as with any current policies and practices, based on available data and analyses.

B. If examination of the successful bid acreage amount reveals that there is more or less state acreage than the amount bid on, without exceeding the boundaries advertised, the dollar amount (bonus) shall be adjusted accordingly.

C. The board has the authority to accept or reject any bid.

D. The cash bonus and the administrative fee paid shall be negotiated and transmitted for processing in accordance with law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

**§1138. Award of an Alternative Energy Source Lease**

A. At the next regular board meeting following conclusion of the staff's examination and evaluation of the bids for an AESL, after the staff has technically briefed the board in executive session as to the merit of the bids and the approval of the COP, the board shall reconvene in open session at the lease sale. The OMR designee shall publicly announce the staff's recommendations to the board as to which bids should be accepted and which bids should be rejected, and providing the reasons for rejection. The board shall announce its AESL award decision at the lease sale.

B. Information, including bids, all required authorizations and approvals, and award of any AESL shall be published in the DNR Strategic Online Natural Resources Information System ("SONRIS").

C. The cash bonus and administrative fee, as required pursuant to §1104, shall be due within 24 hours of the award of the AESL. Payments shall be made payable to the "Office of Mineral Resources" via certified funds, bank money order, cashier's check, bank wire, or Automated Clearing House (ACH) transfer. Failure to submit payments within 24 hours of the award of the AESL shall be deemed forfeiture by the applicant of the AESL.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

**§1139. Issuance and Execution of an Alternative Energy Source Lease**

A. OMR shall assign an AESL number to each lease awarded by the board, prepare the AESL as awarded, and mail no less than three original copies, properly executed by the board, to the alternative energy source lessee, via certified USPS mail, return receipt requested.

B. Upon receipt of the lease package via certified mail, the alternative energy source lessee will have 20 days from the date on the certified mail receipt or, if no date is affixed thereon, from the date the board, through OMR, receives the certified mail receipt, to return to the board, through OMR, one fully executed original lease contract and the recordation information from each parish wherein it is recorded. Failure to return one fully executed original lease contract and the recordation information from each parish wherein the lease is recorded to the board, through OMR, within 20 days may result in forfeiture of the AESL, including the dollar amount (bonus) and 10 percent administrative fee. Failure to follow the notarization requirements of R.S. 35:12 shall cause the lease to be rejected.

C. Any party may request proof that a particular AESL granted by the board was timely executed by using the official form available from OMR. Proof of timely execution of lease consists of a certificate issued by the board, through OMR, certifying that the lease was received by the board, through OMR, duly executed by the lessee, within the allotted 20 day period. There is a fee of \$5 for providing proof of timely execution of a lease.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

**§1140. Alternative Energy Source Lease Operations**

A. An AESL on state lands or water bottoms shall have a maximum initial term of five years and continue thereafter, as long as the alternative energy source operations are being conducted without interruption and electric power is being generated and used in significant quantities for the commercial transmission of electric energy and applicable fees are paid to the board, through OMR, in a timely manner.

B. All AESLs shall be executed upon the terms and conditions provided in the current official AESL with any attached rider(s).

C. Notwithstanding any provisions to the contrary in any AESL awarded or in any rider attached thereto, the lease awarded shall be granted and accepted without any warranty of title and without any recourse against the Lessor whatsoever, either expressed or implied. Further, Lessor shall not be required to return any payments received under the AESL awarded or be otherwise responsible to the lessee.

D. Lessor accepts and reserves the full use of the leased premises and all rights with respect to its surface and subsurface for any and all purposes except for those granted to the lessee, including the use of the leased premises for the exploration, production and development of oil, gas and other minerals by the Lessor, its mineral lessees, grantees or permittees. Co-users of the leased premises shall agree to coordinate plans and cooperate on activities to minimize interference with other operations to the extent possible.

E. Prior to commencing construction, each lessee and AESL operator shall obtain a general liability insurance policy in a form acceptable to the board as set forth in §5003 of this Chapter.

F. Prior to commencing construction, each lessee and AESL operator shall provide financial security in a form acceptable to the board as set forth in §5001 of this Chapter.

G. Lessee hereby agrees that in exercising the rights granted under the AESL, it will comply with and be subject to all current applicable laws and regulations, including, but not limited to, environmental laws, ports and waterways laws, energy laws, and those validly adopted or issued, by the U.S. and its agencies, by the state of Louisiana and its agencies, and by any applicable local or parish government. Lessee further agrees that it will comply with all minimum water quality standards validly adopted by governmental authorities with respect to pollution, noxious chemicals, and waste being introduced into affected water areas.

H. Any contract entered into for the lease of state lands for any purpose shall require that access by the public to public waterways through the state lands covered by the lease shall be maintained and preserved for the public by the lessee. This provision shall not prohibit the secretary of the state agency having control over the property from restricting access to public waterways if the secretary determines that a danger to the public welfare exists. This provision shall not apply in cases involving title disputes.

I. The alternative energy source lessee operator shall schedule a pre-operations meeting with and submit an operations package to the board, through OMR, at least 30 days prior to commencement of construction. The operation package shall contain the following additional items:

1. notice of beginning of AESL operations;
2. proof of financial assurance as set forth in Subpart D of this Chapter;
3. an updated list of project participants;
4. any other information or documentation required by the board, through OMR.

J. At the expiration of the primary term, production of alternative energy source electric power shall be required to maintain the lease in force. If the lessee is producing alternative energy source generated electric power, the lease shall continue in force as long as production of generated electric power continues without lapse of more than 180 days, unless the suspension is due to a suspension order. Any lapse in production of generated electric power greater than 180 days may, at the board's discretion, result in the termination of the lease.

K. Lessee shall survey the exact locations of any physical improvements that it has made upon the property including, but not limited to, turbines and mounting structures, controller boxes, foundations, roads, overhead and underground electrical wires, communication lines, poles and cross members, and substations and transmission facilities, and shall further show the areas of land containing the improvements on the survey.

L. Any and all alternative energy source data collected during the term of the lease by the alternative energy source lessee shall be provided to the board, through OMR, every six months. All information maps, plots, and other data provided to the board, through OMR, shall be deemed public record except where the record is designated as confidential

by law. Any record determined to be confidential shall not be released to any agency or entity absent a valid court order from a court of competent jurisdiction.

M. Periodic reporting may be required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1141. Transfer of Interest in or Assignment of an Alternative Energy Source Lease**

A. Prior to execution and recordation of a transfer of interest in or assignment of an AESL, a prospective transferee or assignee of an AESL shall schedule a pre-transfer meeting with and submit a transfer package to the board, through OMR, no later than the board's regular meeting for the month prior to the board's regular meeting at which the item is to appear on the board's docket for approval.

B. No transfer or assignment in relation to any AESL shall be valid unless approved by the board prior to the transfer or assignment. Failure to obtain board approval of any transfer or assignment of an AESL prior to transfer or assignment shall subject the transferor or assignor and the transferee or assignee, jointly, severally and in solido, to liquidated damages of \$100 per day, beginning on the first day following the execution of the transfer or assignment.

C. Transfers or assignments shall not be granted to prospective leaseholders that are not currently registered with OMR as set forth under §1159 of this Chapter.

D. The transfer package shall contain the following items:

1. an official letter from FERC approving the transfer of the federal energy license, if required;
2. two original, unexecuted, unrecorded transfer or assignment instruments designating the operator and the principal alternative energy source lessee authorized to act on behalf of all co-lessees with proof of designation attached.;
3. a Designation of Principal State Alternative Energy Source Lessee and Operator Form completed by each prospective leaseholder;
4. a separate Statement of Conveyance of Alternative Energy Source Lease Form completed for each AESL impacted by the transfer. Each form shall reflect only the gross working interest in the lease existing before and after the conveyance (no net revenue interests shall be considered or reported);
5. a proposed plan of operations that includes all items set forth in §1135.C.3.a.-1. of this Chapter;
6. any environmental impact documentation supplementing and updating §1132.A.5 of this Chapter;
7. a list of project participants who are or will be participating in the planning, development, construction, operation, maintenance, remediation, and/or decommission phases of the proposed AESP, and a brief description of each project participant's role;
8. a summary of project financing which shall include, at a minimum, identification of the sources of financing and a discussion of the financing;
9. a list of governmental entities, including each federal, state, parish and local governmental entity that has jurisdiction in the leased area and for each, the contact

person's name, title, office address, telephone and fax numbers, and email address, as well as the type of legal authority, if any, acquired or to be acquired from the governmental entity;

10. if AESL operations have commenced, proof of general liability insurance held by the transferee/assignee in a form acceptable to the board as set forth in §1154 of this Chapter and proof of financial assurance from the transferee/assignee in a form acceptable to the board as set forth in §1153 of this Chapter;

11. a docket fee in the amount of \$100 made payable to the "Office of Mineral Resources" to cover the cost of preparing and docketing transfers or assignments of an AESL. A personal or business check shall be acceptable;

12. any other information and documentation required.

E. An assignment or other transfer made by lessee which has been approved by the board does not relieve the original lessee, or any of its successors or assigns, of any and all obligations, duties, or responsibilities incurred under the terms of the AESL.

F. No assignment or transfer of an AESL shall be valid unless a provision has been made by the assignor or transferor and assignee or transferee to have the financial security and insurance set forth in this Chapter maintained in full force and effect following the assignment or other transfer into the authority of the assignee. Written evidence of the maintenance of the required financial security and insurance shall be presented together with the assignment or other transfer at the same time as submitted for the board's approval. The same shall hold true for each and every successive assignment or transfer of an interest in the AESL.

G. Upon board approval of the transfer or assignment, the transferor/assignor or transferee/assignee shall record the approved transfer instrument and the approval resolution in the appropriate parish(es) per the approval resolution and shall furnish the board, through OMR, with an original certified copy of the recorded instrument from the respective clerk of court office(s).

H. Upon board approval, the transfer or assignment instrument shall be executed, in authentic form, by both transferor and transferee/assignor and assignee [and spouse(s), if appropriate]. As an alternative, the transferee/assignee [and spouse(s), if appropriate] may execute an acceptance by assignee form, executed in authentic form, with a copy attached to each of the transfer instruments.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1142. Partial or Full Release of an Alternative Energy Source Lease**

A. Upon expiration or termination of an AESL, in whole or in part, for any reason, the principle alternative energy source lessee shall execute and record an appropriate instrument of release within 90 days of expiration or termination in each parish wherein the leased premises are located and shall provide the board, through OMR, with a copy of the recorded instrument of release from each parish wherein it is recorded properly certified by the recorder for that parish. In the event the principle alternative energy

source lessee fails to comply, all other active joint-lessees shall be jointly and solidarily liable for liquidated damages in the amount of \$100 per day commencing on day 91 after expiration or termination. The lessee(s) shall also be responsible for reasonable attorney fees and costs incurred should litigation be required for AESL cancellation.

B. The release instrument shall contain the AESL number and shall be signed by the principle alternative energy source lessee, with the signature duly witnessed and notarized. Failure to follow the notarization requirements of R.S. 35:12 shall be grounds for rejection of the release instrument.

C. Should a lessee wish to release only a portion of the leased acreage, the lessee shall contain the whole of the retained acreage within a single contiguous block of acreage.

1. For a partial release only, the lessee shall also provide the following items:

a. a written property description, fully justified, using Microsoft Word. The first part shall describe and provide the amount of state owned acreage released. The second part shall describe and provide the amount of state owned acreage retained. X-Y coordinates shall be based on the Louisiana Coordinate System of 1927, North or South Zone (as applicable), shall be used, starting with an X-Y point of beginning and using distance and bearings to each X-Y corner or turning point. Calculations, closures and ties to existing AESLs that comply with generally accepted surveying standards shall be used;

b. a plat that clearly delineates the boundaries of and sets forth the state owned acreage amount released and the state owned acreage amount retained. An 8½" x 11" paper copy of the most recent edition of the 7½ minute USGS Quadrangle Map (scale 1" = 2000' or 1" = 3000'; or the block system of 1" = 4000', if applicable) shall be used. X-Y coordinates based on the Louisiana Coordinate System of 1927, North or South Zone (as applicable) shall be used, starting with an X-Y point of beginning and using distance and bearings to each X-Y corner or turning point. Calculations, closures and ties to existing AESLs that comply with generally accepted surveying standards shall be used;

2. Each of the above items shall be submitted in original paper form. Additionally, a CD-ROM or DVD ("AESL Release Disk") clearly labeled "AESL Release Disk" shall be submitted. Each AESL Release Disk shall be affixed with the lessee and project names thereon and shall contain an electronic version of Item C.1. above as a Word.doc file and Item C.2. above as a .pdf file. Each Nomination Disk shall also contain a .dxf file which shall contain only the boundary of the acreage portion to be released and that portion to be retained, each consisting of a single line, no additional lines, labels, text, or graphics, and shall be constructed of individual line segments between vertices. The X-Y coordinates in the .dxf file must exactly match those in the written property description and the plat.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

### **Subpart C. Alternative Energy Source Lease Suspension or Cancellation**

#### **§1145. Partial or Full Suspension of an Alternative Energy Source Lease**

A. The board, or an authorized representative of the board, may order a suspension after notice and opportunity for a hearing of the AESL under the following circumstances:

1. when necessary to comply with judicial decrees prohibiting some or all activities under the AESL;
2. when continued activities pose an imminent threat of serious or irreparable harm or damage to natural resources, life (including human and wildlife), property, the marine, coastal, riverine, or human environment, or sites, structures, or objects of historical or archaeological significance;
3. when the alternative energy source operations adversely impact, impede, obstruct, or interfere with the navigability of any waterway, the use of the waterway by other users, or interfere with maritime commerce or the recreational use of the waterway;
4. lessee or its operator fails to comply with an applicable law, regulation, order, resolution, or provision of the AESL.

B. If the board, or its authorized representative, orders a suspension under Paragraph A.2. or A.3. of this Subpart, and the lessee wishes to resume activities, the board, or its authorized representative, may require the lessee to conduct a site-specific study to evaluate the cause of the harm, the potential damage, and/or the available mitigation measures.

1. The lessee shall be responsible for payment of the site-specific study.
2. The lessee shall furnish one paper copy and one electronic copy of the site-specific study and results to the Board or its authorized representative.
3. The board, or its authorized representative, will make the results available to other interested parties and to the public.
4. The board, or its authorized representative, will use the results of the site-specific study and any other information that becomes available:
  - a. to determine if the suspension order should be lifted;
  - b. to determine any actions that the lessee must take to mitigate or avoid any damage to natural resources, life (including human and wildlife), property, the marine, coastal, riverine, or human environment, or sites, structures, or objects of historical or archaeological significance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1146. Suspension Order**

A. The board, or its authorized representative, shall issue a suspension order in accordance with the following procedures:

1. The suspension order may be in oral form or in writing.
2. The board, or its authorized representative, will send the lessee a written suspension order as soon as practicable after issuing an oral suspension order.

3. The written order shall explain the reasons for issuance and describe the effect of the suspension order on the AESL and any associated activities. The board, or its authorized representative, may authorize certain activities or require the removal of certain equipment at the lessee's expense during the period of the suspension, as set forth in the suspension order.

4. The lessee shall have the right to have a hearing at the next scheduled board meeting to petition for the revocation of the suspension order.

B. A suspension order shall last for the period specified in the order. If the board determines that the circumstances responsible for initiation of the suspension order cannot be resolved within a reasonable time period, the board may initiate cancellation of the AESL.

C. A suspension order shall not extend the terms of the AESL for a time period equal to the period of time the lessee is prohibited from conducting activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1147. Equipment Removal Order or Cancellation of an Alternative Energy Source Lease**

A. The board shall cancel any AESL issued under this Part upon proof that the AESL was obtained by fraud or misrepresentation, and after notice and opportunity to be heard has been afforded to the lessee.

B. The board may cancel an AESL issued under this Part if the board determines, after notice and opportunity for a hearing, that the lessee has failed to comply with any applicable provision of these rules, any order of the board, or any term, condition or stipulation contained in the AESL, and that the failure to comply continued for 30 days (or other period the board specifies) after lessee received notice from the board or its authorized representative of non-compliance.

C. The board may cancel the AESL and/or require the lessee to suspend its operations and remove all equipment at lessee's cost from the state lands or water bottoms at any time if the state determines, after the lessee has been given notice and a reasonable opportunity to be heard, that:

1. continued operations under the AESL will cause serious harm or damage to biological resources, property, oil, gas or other mineral resource development activities, the environment (including, but not limited to, the human environment), impede, obstruct or adversely impact navigation or use of the waterway, have a detrimental affect on vessel safety, or if required for the dredging of the waterway;

2. the threat of harm or damage, the impediment or obstruction on navigation, or the detrimental effect on vessel safety exists within an unacceptable limit and cannot be eliminated or reduced to an acceptable limit within a reasonable period of time;

3. the economic advantages of cancellation outweigh the economic advantages of continuing either the AESL in effect or continued operations under the AESL.

D. Failure of the alternative energy source lessee to comply with an order of the board, or its authorized representative, to remove any and/or all equipment or suspend operations by the date specified, shall subject the

lessee to a civil penalty of \$300 per day and shall continue to accrue on a daily basis until lessee complies with the order.

E. The civil penalty shall be paid into the Mineral and Energy Operation Fund on behalf of the board.

F. The state may remove any or all equipment whenever the lessee has failed to comply with the removal order of the board and the lessee shall reimburse the state for all necessary costs incurred.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1148. Effect of a Suspension Order on an Alternative Energy Source Lease**

A. During the time the board, or its authorized representative, evaluates a lessee's request for removal of the suspension issued under §4003 of this Chapter, the lessee must continue to fulfill its payment obligation until the end of the original term of the AESL. If the board or its authorized representative's evaluation goes beyond the end of the original term of the AESL, the term of the AESL shall be extended for the period of time necessary for the board, or its authorized representative, to complete its evaluation of the removal of suspension request. During this extended period of time, the lessee shall not be required to make payments.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **Subpart D. Financial Assurance Requirements**

##### **§1153. Financial Assurance Instrument**

A. Before the board may issue an AESL or approve an assignment of an existing AESL, the lessee or proposed assignee must provide either:

1. a lease-specific bond in an amount set by the board, in an amount no less than \$500,000;

2. an approved financial assurance instrument in the amount required in Paragraph A.1 of this Subpart and as authorized by the board pursuant to §1155.

B. Each bond or other financial assurance must guarantee compliance with all terms and conditions of the AESL. The board may require the lessee to provide a new bond, or it may require the lessee to increase the amount of its existing bond to satisfy any additional financial assurance requirements. lessee shall comply with this requirement by providing either:

1. a certificate of deposit issued exclusively to DNR in a form prescribed by the board from a financial institution acceptable to the board;

2. a performance bond issued exclusively to DNR in a form prescribed by the board from a financial institution acceptable to the board;

3. a line of credit available exclusively to DNR, with DNR bearing no liability, in a form prescribed by the board issued by a financial institution acceptable to the board.

C. The board may require supplemental financial assurance in an amount determined by the board for a specific AESP.

D. The lessee will be considered in compliance with the financial assurance requirements under this Subpart if the lessee's designated lease operator provides a lease-specific bond in the amount required in Paragraph A.1. of this

Subpart or other approved financial assurance that guarantees compliance with all terms and conditions of the AESL.

E. The dollar amount of the minimum, lease-specific financial assurance in Paragraphs A.1. and B. of this Subpart will be adjusted to reflect changes in the Consumer Price Index-All Urban Consumers ("CPI-U") or an industry-equivalent index if the CPI-U is discontinued.

F. No CPI-U adjustment may be made within the five year period following the adoption of this rule. Subsequent CPI-U based adjustments may be made every five years thereafter.

G. The lessee may not terminate the period of liability of the financial assurance instrument or cancel the financial assurance instrument. The financial assurance must continue in full force and effect even though an event has occurred that could diminish or terminate a surety's obligation under state law.

H. Evidence of financial assurance is required to be submitted by January 31 of each calendar year. Failure to submit updated evidence of financial assurance may cause the board, through OMR, to levy liquidated damages of \$100 per day until such evidence is received.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

##### **§1154. Insurance Requirement**

A. The lessee shall purchase and maintain, for the duration of the AESL, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the lessee's operation and use of the leased premises. The cost of such insurance shall be borne by the lessee.

B. The lessee shall obtain at its own cost and expense the following insurance placed with insurance companies authorized to do business in the state with A.M. Best ratings of A-VI or higher. This rating requirement may be waived for workers compensation coverage only.

1. Workers Compensation. Workers Compensation Insurance shall be in compliance with the Workers Compensation Law of the state of the contractor's headquarters. Employers Liability is included with a minimum limit of \$500,000 per accident/per disease/per employee. If work is to be performed over water and involves maritime exposure, applicable LHWCA, Jones Act, or other maritime law coverage shall be included and the Employers Liability limit increased to a minimum of \$1,000,000. A.M. Best's insurance company rating requirement may be waived for workers compensation coverage only.

2. Commercial General Liability. Commercial General Liability Insurance, including Personal and Advertising Injury Liability, shall have a minimum limit per occurrence of \$1,000,000 and a minimum general aggregate of \$2,000,000. The Insurance Services Office (ISO) Commercial General Liability Occurrence Coverage Form CG 00 01 (current form approved for use), or equivalent, is to be used in the policy. A claims-made form is unacceptable.

C. The General Liability Coverage policies shall contain, or be endorsed to contain, the following provisions.

1. The state, OMR, and the board, its officers, agents, employees and volunteers shall be named as an additional insured as regards negligence by the contractor and/or the lessee. ISO Form CG 20 10 (current form approved for use), or equivalent, is to be used when applicable. The coverage shall contain no special limitations on the scope of protection afforded to the state, OMR, and the board.

2. The lessee's insurance shall be primary as respects the state, OMR, and the board, its officers, agents, employees and volunteers. Any insurance or self-insurance maintained by the state, OMR, and the board, shall be excess and non-contributory of the lessee's insurance.

3. Any failure of the lessee to comply with reporting provisions of the policy shall not affect coverage provided to the state, OMR, and the board, its officers, agents, employees and volunteers.

4. The lessee's insurance shall apply separately to each insured against whom claim is made or suit is initiated, except with respect to the policy limits.

D. The Workers Compensation and Employers Liability Coverage Policies shall contain, or be endorsed to contain, the following provisions.

1. The insurer shall agree to waive all rights of subrogation against the state, OMR, and the board, its officers, agents, employees and volunteers for losses arising from or in connection with the lessee's operation and use of the leased premises.

E. The lessee shall provide verification of insurance coverage in the following manner.

1. The lessee shall furnish OMR with certificates of insurance reflecting proof of required coverage. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be received and approved by OMR before work commences and upon any AESL renewal thereafter.

2. In addition to the certificates, the contractor and the lessee shall submit the declarations page and the cancellation provision endorsement for each insurance policy. OMR reserves the right to request complete certified copies of all required insurance policies at any time.

3. Upon failure of the lessee to furnish, deliver and maintain insurance as provided above, the AESL, at the election of the board may be suspended, discontinued or terminated. Failure of the lessee to purchase and/or maintain any required insurance shall not relieve the lessee from any liability or indemnification.

F. All certificates of insurance of the lessee shall reflect the following.

1. The lessee's insurer will have no right of recovery or subrogation against the state, all state departments, agencies, boards, commissions, port authority, political subdivision, and levee district. It is the intention of the parties that the lessee's insurance policies shall protect both parties and shall be the primary coverage for any and all losses that occur under the AESL.

2. The state, OMR, and the board, its officers, agents, employees and volunteers shall be named as an additional insured as regards negligence by the contractor, the lessee or the operator of the AESP. ISO Form CG 20 10 (current form approved for use), or equivalent, is to be used when applicable.

3. The insurance companies issuing the policy or policies shall have no recourse against the state, all state departments, agencies, boards, commissions, port authorities, political subdivisions, and levee districts for payment of any premiums or for assessments under any form of the policy or policies.

G. If at any time an insurer issuing any policy does not meet the minimum A.M. Best rating, the lessee shall obtain a policy with an insurer that meets the A.M. Best rating and shall submit another certificate of insurance as required. Upon failure of the lessee to furnish, deliver and maintain insurance as provided above, the AESL, at the election of the board or OMR, may be suspended, discontinued or terminated. Failure of the lessee to purchase and/or maintain any required insurance shall not relieve the lessee from any liability or indemnification under the AESL.

H. Any deductibles or self-insured retentions must be declared to and accepted by OMR. Any and all deductibles shall be assumed in their entirety by the lessee.

I. All property losses caused by the actions of the lessee shall be adjusted with and made payable to the state of Louisiana.

J. The lessee or the lessee's insurer shall submit updated proof of insurance as required by this Subpart to OMR by January 31 of each calendar year. If lessee or lessee's insurer fails to submit proof, OMR may levy liquidated damages in the amount of \$100 per day until proof is received.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1155. Financial Assurance Amount Determination**

A. The board's determination of the amount of the financial assurance required shall be based on estimates of the lessee's cost to meet all accrued lease obligations, including, but not limited to, decommissioning.

B. The amount of the supplemental and decommissioning financial assurance requirements, if required by the board, shall be determined on a case-by-case basis. The amount of the financial assurance shall be no less than the amount required to meet all lease obligations, including:

1. the projected amount of rent and other payments due to the state for a 12 month period commencing the date the funds become necessary;
2. any past due rent and other payments;
3. any other monetary obligations;
4. the estimated cost of facility decommissioning, as required in Subpart E of this Chapter.

C. If the lessee's cumulative potential obligations or liabilities increase or decrease, the board may adjust the amount of financial assurance or supplemental financial assurance required. In no event shall the board decrease the dollar amount less than the minimums required in §5001 and §5003 of this Chapter. If the board proposes adjusting the amount of financial assurance required, OMR will notify the lessee of the proposed adjustment and provide the lessee an opportunity to comment.

D. Based on the information and statements provided by the lessee at the hearing, the board may modify the dollar amount required. The board may not modify the dollar

amount required below the minimums required in §1153 and §1154 of this Subpart.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1156. Bankruptcy or Lapse of Financial Assurance or Insurance**

A. If the lessee becomes bankrupt or insolvent, or if the approved financial assurance expires for any reason, the lessee shall:

1. notify the board or its authorized representative within five business days of the expiration of existing financial assurance and/or insurance. Lessee's failure to renew or obtain new financial assurance and/or insurance prior to the expiration of existing financial assurance and/or insurance shall automatically suspend all rights granted to the lessee under the AESL. Lessee's failure to obtain coverage within 90 days after termination of the required security and/or insurance shall result in termination of the AESL;

2. notify the board or its authorized representative within five business days of the initiation of any judicial or administrative proceeding alleging insolvency or bankruptcy;

3. notify the board or its authorized representative within five business days after the lessee learns of any action filed alleging that the lessee's surety, or third-party guarantor, is insolvent or bankrupt.

B. If the approved financial assurance and/or insurance expire for any reason:

1. prior to the cancellation of the security or insurance required by this Subpart, if the lessee does not provide the Lessor evidence that a new security or insurance has been obtained meeting all of the requirements of this Subpart, all rights granted to the lessee under the AESL shall automatically and, without further notice to the lessee, be suspended;

2. the lessee shall immediately suspend operations under the AESL except for those operations necessary to maintain the safety of already ongoing operations. The lessee shall provide evidence to the board or its authorized representative by providing sufficient documentation demonstrating the reinstatement of the requisite security and/or insurance;

3. upon the reinstatement of the requisite security and/or insurance, the lessee will be allowed to resume operations;

4. should lessee fail to obtain coverage within 90 days after termination of the required security and/or insurance, the AESL shall terminate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1157. Financial Assurance Company Rating**

A. The financial assurance must be supplied by a company to whom A.M. Best Company has given not less than an "A" rating.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

### **Subpart E. Decommissioning Requirements**

#### **§1161. Decommissioning Liability**

A. Lessees, successors and/or assignees are jointly and solidarily responsible for meeting the decommissioning obligations for facilities on each AESL, including all obstructions, as the obligations accrue and until each obligation is met.

B. The decommissioning obligation will begin when a lessee, sub-lessee, assignee, or successor installs, or constructs equipment for the AESP, including, but not limited to, a facility, turbine, support structure, cable, or pipeline, or when the lessee, sub-lessee, assignee, or successor creates an obstruction to other uses of state lands or water bottoms.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1162. Decommissioning General Requirements**

A. Before decommissioning the facilities under an AESL, the lessee shall submit a decommissioning application and receive approval from the board or its authorized representative.

B. Following approval of the decommissioning application, the lessee shall submit a decommissioning notice at least 15 days prior to commencement of decommissioning activities. The decommissioning shall begin no later than 45 days following the approval of the decommissioning application.

C. Within one year following termination of an AESL, the lessee shall:

1. remove or decommission all facilities, turbines, support structures, cables, pipelines, and obstructions associated with the AESL;

2. clear the waterway and the water bottoms of all obstructions created by alternative energy source activities on the leased area. The board may require the lessee to immediately remove any and all obstructions effecting navigation and commerce of the waterway.

D. If the lessee, sub-lessee, assignee, successor, subcontractor, or any agent acting on behalf of lessee discovers any archaeological resource while conducting decommissioning activities, the party performing the decommissioning activities shall immediately cease bottom-disturbing activities within 1,000 feet of the discovery and report the discovery to the board, through OMR, within 72 hours of the discovery. Any party having knowledge of the discovery shall keep the location of the discovery confidential, except to report it to OMR, and shall not take any action that may adversely affect the archaeological resource unless instructed by OMR.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1163. Decommissioning Application Time Requirements**

A. The lessee shall submit a decommissioning application upon the earliest of the following dates:

1. two years prior to the expiration of the AESL;

2. ninety days after completion of the commercial activities on an AESL;



3. ninety days after cancellation, relinquishment, or other termination of the AESL.

B. Lessee shall justify any difference(s) existing between the decommissioning application and the approved COP submitted pursuant to §1135 of this Chapter.

C. The board may reject any proposed modification to the decommissioning plan as submitted and approved in the COP and require the lessee to comply with the most stringent plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1164. Decommissioning Notice**

A. The board, through OMR, shall advertise notice of the receipt of any decommissioning application pertaining to an AESL in the local newspaper where the AESL is located and in the official state journal. Such advertisement shall identify:

1. the title and address of OMR.;
2. the name, title, address, and telephone number of an OMR representative from whom additional information and/or documentation may be obtained;
3. the name and address of the entity submitting the decommissioning application;
4. the name and physical location of the affected facility;
5. the name of the affected waterway;
6. the activities involved in the decommissioning action;
7. the most recent approved decommissioning plan;
8. a brief description of the appropriate comment procedures;
9. the date, time and place of any scheduled hearing;
10. the procedure(s) for requesting a hearing.

B. The board, through OMR, shall provide at least 30 days for public comment.

C. The board, through OMR, shall provide notice of the proposed decommissioning application to each affected state agency and Port Authority within five business days of receipt of the decommissioning application. The comment period for affected state agencies and Port Authorities shall expire at the close of the public comment period.

D. The board may refuse to accept any recommendations for the decommissioning application submitted by a state agency and/or Port Authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1165. Decommissioning Application Information Requirements**

A. The lessee, sub-lessee, assignee, or successor shall include the following information in the decommissioning application:

1. Identification of the applicant, including:
  - a. names and addresses of the lease operator and lessee;
  - b. name and telephone number of lessee's contact person;
  - c. name, address, telephone number, and name of contact of the companies which issued the required financial assurance instruments and required insurance.

2. Identification and description of the facilities, turbines, support structures, cables, and/or pipelines lessee plans to remove or proposes to leave in place.

3. A proposed decommissioning schedule for the lease, including the expiration or relinquishment date and proposed month and year of removal.

4. A description of the removal methods and procedures, including the types of equipment, vessels, and moorings to be removed (e.g., anchors, chains, lines).

5. A description of the lessee's site clearance activities.

6. The lessee's plans for transportation and disposal or salvage of the removed facilities, turbines, support structures, cables, or pipelines and any required approvals.

7. A description of any resources, conditions, or activities that could be affected by or could affect the proposed decommissioning activities. The description shall confirm compliance with the National Environmental Protection Act ("NEPA") and other relevant federal, state and local laws.

8. The results of any recent biological surveys conducted in the vicinity of the leased area.

9. Mitigation measures secured to protect archaeological and sensitive biological features during removal activities.

10. A description of measures to prevent the unauthorized discharge of pollutants, including marine or riverine trash and debris, onto state lands or into waters.

11. A determination of lessee's intent to use divers to survey the leased area after removal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1166. Process of Decommissioning Application**

A. Upon lessee's compliance with §1165 of this Chapter, OMR or other state agencies may request a technical and environmental review based on a comparison of the decommissioning application and the decommissioning general concept in the approved COP.

B. The lessee may be required to revise the COP and begin the appropriate NEPA analysis and/or other regulatory reviews, as required, if OMR or other state agencies determine that the lessee's decommissioning application would:

1. result in a significant change in the impacts previously identified and evaluated in the COP;
2. require any additional federal or state permits;
3. propose activities not previously identified and evaluated in the COP.

C. During the review process, OMR or other state agencies may request additional information if it determines that the information provided is insufficient to complete the review process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1167. Decommissioning Removal Requirements**

A. The lessee must remove all equipment, including, but not limited to, facilities, turbines, support structures, pipeline, and cables, and shall comply with the decommissioning requirements as set forth by the U.S. Army

Corps of Engineers. The lessee shall also comply with any additional or more stringent decommissioning requirements mandated by the board, through OMR.

B. Within 60 days after the removal of a facility, the lessee shall verify to the board, through OMR, that it has removed all equipment required to be removed and that it has cleared the state lands and water bottoms of all obstructions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1168. Decommissioning Report**

A. Within 60 days after lessee has completed the decommissioning requirement and has restored the lease site by the removal of all alternative energy source equipment, including, but not limited to, facilities, turbines, support structures, cables, or pipelines, lessee shall submit a written report to the board, through OMR, that includes the following:

1. a summary of the removal activities, including the date removal activities were completed;
2. a description of any mitigation measures taken by lessee;
3. if lessee used explosives, a statement signed by lessee's authorized representative certifying that the types and amounts of explosives utilized were consistent with those in the approved decommissioning application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1169. Failure to Comply with Decommissioning Requirements**

A. The lessee shall comply with the decommissioning requirements as set forth in the approved decommissioning plan. If lessee fails to comply with the decommissioning requirements:

1. the board shall require the lessee to forfeit the financial assurance provided pursuant to §1153 and §1155 of this Chapter;
2. the lessee shall remain liable for the removal or disposal costs and shall be responsible for all accidents or damages, including reasonable attorney fees expended by the state to defend claims resulting from lessee's failure to comply with decommissioning requirements;
3. the board, or its authorized representative, may take legal action to enforce the decommissioning requirements. The lessee shall be liable for all reasonable attorney fees expended by the board or its authorized representative required to enforce the decommissioning obligations;
4. the lessee shall remain the owner of all facilities and/or equipment installed and used in the alternative energy project. The state shall have the right to remove any and all of the facilities and/or equipment at the expense of the lessee.

B. Failure of the alternative energy source lessee to comply with decommissioning obligations to remove all equipment by the date specified in the approved decommissioning plan shall subject the lessee to a civil penalty of \$300 per day and shall continue to accrue on a daily basis until the date the lessee has complied with the decommissioning obligation.

C. The civil penalty shall be paid into the Mineral and Energy Operation Fund on behalf of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **Subpart F. Special Hydrokinetic Rules**

##### **§1175. FERC Authority**

A. This Subpart shall apply only to hydrokinetic energy source projects which fall under the jurisdiction of the Federal Power Commission pursuant to the Federal Power Act, 16 U.S.C. 791a, et seq.

B. In the event there is a conflict with the requirements of this Subpart with any requirements under Chapter 11, the requirements set forth in this Subpart shall govern.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

##### **§1176. Hydrokinetic Lease Compliance**

A. All applicants must first obtain approval by FERC for the issuance of a preliminary permit, license, exemption, or other authorization for the development of hydrokinetic energy. The lessee may use the documents submitted and approved by FERC to satisfy the following requirements.

1. The COP may satisfy the requirements of §1121 of this Chapter.
2. The Coast Guard recommendations may satisfy the requirements of §1145 of this Chapter and any information required concerning navigational safety and maritime security.
3. The report on fish, wildlife, and botanical resources may satisfy the information required of §1135.C.3.h. of this Chapter to determine the project's impact and mitigation required to protect the fish, wildlife and botanical resources.
4. The report on historical and archaeological resources may satisfy the information required of §1135.C.9. of this Chapter to determine the project's impact and mitigation required to protect the historical and archaeological resources of the area.
5. The report on socio-economic impacts may satisfy the requirements of §1135.C.3.h. of this Chapter.
6. The report on environmental impact may satisfy the requirements of §1132.A.5. and §1135.C.4. of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

##### **§1177. Submission of Bid for Hydrokinetic Energy Source Lease**

A. All interested registered parties who hold a valid preliminary permit, license, exemption, or other authorization issued by FERC pursuant to its authority under the Federal Power Act, 16 U.S.C. 791a, et seq., shall submit a bid package on the entirety of the State tract nominated and advertised for State hydrokinetic energy source lease to the board, through OMR, in the form OMR requires by the advertised deadline. Each bid package shall be accompanied by any other documentation and information required.

B. An official bid form is available from OMR. Applicant must provide one originally signed paper copy and no electronic copy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **Part V. Office of Mineral Resources**

#### **Chapter 4. Dry Hole Credit Program**

#### **§401. Definitions**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:150 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 32:1608 (September 2006), repealed LR 37.

#### **§403. Application for Status as a Dry Hole Credit Well**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:150 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 32:1609 (September 2006), repealed LR 37.

#### **§405. Assignment of a Dry Hole Credit**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:150 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 32:1610 (September 2006), repealed LR 37.

#### **§407. Application for Status as a Pre-Qualifying Well**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:150 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 32:1610 (September 2006), repealed LR 37.

#### **§409. Application for Status as a Royalty Relief Receiving Well**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:150 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 32:1611 (September 2006), repealed LR 37.

#### **§411. Extending the Dry Hole Credit Offset beyond Thirty-Six Months**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:150 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 32:1613 (September 2006), repealed LR 37.

#### **§413. Termination of Dry Hole Credit Offset**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:150 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 32:1613 (September 2006), repealed LR 37.

#### **Family Impact Statement**

1. What effect will this Rule have on the stability of the family? The proposed Rule will not affect the stability of the family.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? The proposed Rule will not affect the

authority and rights of persons regarding the education and supervision of their children.

3. What effect will this have on the functioning of the family? This Rule will not affect the functioning of the family.

4. What effect will this have on family earnings and family budget? This Rule will not affect the family earnings or family budget.

5. What effect will this have on the behavior and personal responsibility of children? This Rule will not affect the behavior or personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, the action proposed is strictly a State leasing function.

#### **Public Comments**

Interested persons may submit written comments to Byron Miller, Geologist Supervisor, Office of Mineral Resources, Department of Natural Resources, P.O. Box 2827, Baton Rouge, LA 70821-2827, or by facsimile to (225) 242-3499. All comments must be submitted by 4:30 p.m., September 23, 2011. This proposed regulation is available on the internet at <http://dnr.louisiana.gov> and is available for inspection at the DNR office from 8 a.m. until 4:30 p.m.: 617 N. Third Street, Eighth Floor, Baton Rouge, LA 70802.

Robert D. Harper  
Undersecretary

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

#### **RULE TITLE: Mineral Resources, Alternative Energy Leasing and Dry Hole Credit**

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

The proposed rule amendments create an Alternative Energy Source Leasing Program and repeal the Dry Hole Credit Program.

An Alternative energy source, as defined by Acts 875 and 930 of the 2010 Regular Legislative Session, includes but is not limited to, wind energy, geothermal energy, solar energy and hydrokinetic energy. The Department of Natural Resources anticipates that alternate energy source leasing activity will be minimal over the next two years.. However, the Federal Energy Regulatory Commission (FERC) may issue licenses for hydrokinetic energy projects beginning in late 2013. FERC issued licenses may result in hydrokinetic energy leasing activity in the Mississippi River and Atchafalaya River beginning in late 2013.

Since the Office of Mineral Resources has an ongoing mineral leasing operation for state onshore and offshore lands and water bottoms, it is anticipated alternative energy source leasing activity can be easily absorbed with existing resources. The Office of Mineral Resources cannot quantify the implementation costs to any other state or local governing units.

The proposed rule amendments repealing the Dry Hole Credit Program (Act 298 of the 2005 regular Legislative Session and Act 196 of the 2009 Regular Legislative Session) will have no impact on state or local governmental unit expenditures.

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

The proposed rule amendments creating the Alternative Energy Source Leasing Program will impact revenue

collections to the State General Fund and Self-generated Revenues of the department.

The Department of Natural Resources anticipates that alternative energy source leasing activity will be minimal over the next two years, with hydrokinetic energy leasing activity possibly beginning in late 2013. Hydrokinetic energy development activity will likely be limited to "first of its kind" demonstration or proof of concept projects. The economics of hydrokinetic energy projects are unknown, but likely marginal at this point. Therefore, revenue in the early years of implementation of this developing resource base will be minimal. The cash bonus collected for alternative energy source leases will be deposited to the State General Fund and the administrative fee in the amount of ten percent (10%) of the cash bonus will be deposited as Self-Generated Revenues to the department.

Estimated revenues in 2013-14 may be \$3,179,000 assuming the following: a total of 3 hydrokinetic energy project sites in Louisiana for an estimated total of 2,890 acres leased (site 1: expansion of the test site requiring an additional 660 acres, site 2: 805 acres, and site 3: 1,425 acres) with an estimated cash bonus of \$1,000/acre (2,890,000) plus 10% administrative fee (\$289,000).

The above estimates assume that the State Mineral and Energy Board would receive \$1,000/acre in cash bonuses for alternative energy source leases. However, cash bonus amounts will be dictated by market conditions.

The repeal of the Dry Hold Credit Program will have no impact on revenue collections of the state or local governmental units.

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

The costs and/or economic benefits to others cannot be quantified at this time. The program should have a positive effect on alternative energy exploration and development activity. Alternative energy source development will provide a continuing utility-scale clean energy source for citizens and businesses; support economic development through job retention and creation; and promote a clean environment in Louisiana.

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

The effect on competition and employment cannot be quantified at this time. If the program is successful in encouraging exploration and development, increased employment in the alternative energy section will occur.

Stacy R. Talley  
Deputy Assistant Secretary  
1108#022

Evan Brasseur  
Staff Director  
Louisiana Fiscal Officer

## NOTICE OF INTENT

### Department of Public Safety and Corrections Corrections Services

#### Administrative Remedy Procedure (LAC 22:I.325)

In accordance with the provisions of the Administrative Procedure Act (R.S.49:950), the Department of Public Safety and Corrections, Corrections Services, hereby gives notice of its intent to amend the contents of Section 325 Administrative Remedy Procedure.

## Title 22 CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT Part I. Corrections

### Chapter 3. Adult Services

#### Subchapter A. General

#### §325. Administrative Remedy Procedure

A. Purpose—to constitute the Department's "Administrative Remedy Procedure" for offenders as a regulation.

B. Applicability—deputy secretary, chief of operations, regional wardens, wardens, and sheriffs or administrators of local jail facilities. Each unit head is responsible for ensuring that all unit written policies and procedures are in place to comply with the provisions of this regulation.

C. Policy. It is the secretary's policy that all offenders and employees have reasonable access to and comply with the department's "Administrative Remedy Procedure" through which an offender may seek formal review of a complaint relating to most aspects of his incarceration. Offenders housed in local jail facilities shall also be afforded reasonable access to a grievance remedy procedure.

1. Revisions will be accomplished through this regulation under the signature of the secretary.

#### D. Administrative Remedy Procedure

1. On September 18, 1985, the Department of Public Safety and Corrections installed in all of its adult institutions a formal grievance mechanism for use by all offenders committed to the custody of the department. The process bears the name Administrative Remedy Procedure (ARP). Offenders are required to use the procedure before they can proceed with a suit in federal and state courts.

2. Offenders are encouraged to continue to seek solutions to their concerns through informal means, but in order to ensure their right to use the formal procedure, they shall make their request to the warden in writing within a 90 day period after an incident has occurred. If, after filing in the formal procedure an offender receives a satisfactory response through informal means, the offender may request (in writing) that the warden cancel his formal request for an administrative remedy.

3. All offenders may request information about or assistance in using the procedure from their classification officer or from a counsel substitute who services their living area.

4. Original letters or requests to the warden should be as brief as possible. Offenders should present as many facts as possible to answer all questions (who, what, when, where and how) concerning the incident. If a request is unclear or the volume of attached material is too great, it may be rejected and returned to the offender with a request for clarity or summarization on one additional page. The deadline for this request begins on the date the resubmission is received in the warden's office.

5. Once an offender's request is accepted into the procedure, he must use the manila envelope that is furnished to him with the first step response (Form B-05-005-ARP-2) to continue in the procedure. The flaps on the envelope may be tucked into the envelope for mailing to the facility's ARP screening officer.

### E. Purpose

1. Corrections Services has established the administrative remedy procedure through which an offender may seek formal review of a complaint which relates to any aspect of his incarceration if less formal methods have not resolved the matter. Such complaints and grievances include, but are not limited to any and all claims seeking monetary, injunctive, declaratory or any other form of relief authorized by law and by way of illustration, includes actions pertaining to conditions of confinement, personal injuries, medical malpractice, time computations, even though urged as a writ of habeas corpus, or challenges to rules, regulations, policies or statutes. Through this procedure, offenders shall receive reasonable responses and where appropriate, meaningful remedies.

### F. Applicability

1. Offenders may request administrative remedies to situations arising from policies, conditions or events within the institution that affect them personally.

2. There are procedures already in place within all DPSC institutions which are specifically and expressly incorporated into and made a part of this administrative remedy procedure. These procedures shall constitute the administrative remedies for disciplinary matters and lost property claims.

3. The following matters shall not be appealable through this administrative remedy procedure:

- a. court decisions and pending criminal matters over which the department has no control or jurisdiction;
- b. Pardon Board and Parole Board decisions (under Louisiana law, decisions of these boards are discretionary, and may not be challenged);
- c. Louisiana Risk Review Panel recommendations;
- d. Lockdown Review Board decisions (offenders are furnished written reasons at the time this decision is made as to why they are not being released from lockdown, if that is the case. The board's decision may not be challenged. There are, however, two bases for request for administrative remedy on Lockdown Review Board hearings):

- i. that no reasons were given for the decision of the board;
- ii. that a hearing was not held within 90 days from the offender's original placement in lockdown or from the last hearing. There will be a 20 day grace period attached hereto, due to administrative scheduling problems of the board; therefore, a claim based on this ground will not be valid until 110 days have passed and no hearing has been held.

### G. Definitions

1. As used in this procedure, the following definitions shall apply.

*ARP Screening Officer*—a staff member, designated by the warden, whose responsibility is to coordinate and facilitate the administrative remedy procedure process.

*Grievance*—a written complaint by an offender on the offender's own behalf regarding a policy applicable within an institution, a condition within an institution, an action involving an offender of an institution, or an incident occurring within an institution.

*Emergency Grievance*—a matter in which disposition within the regular time limits would subject the offender to a

substantial risk of personal injury, or cause other serious and irreparable harm to the offender.

*Days*—calendar days.

H. Policy. All offenders, regardless of their classification, impairment, or disability, shall be entitled to invoke this grievance procedure. It shall be the responsibility of the warden to provide appropriate assistance for offenders with literacy deficiencies or language barriers. No action shall be taken against an offender for the good faith use of or good faith participation in the procedure. Reprisals of any nature are prohibited. Offenders are entitled to pursue, through the grievance procedure, a complaint that a reprisal occurred.

1. Reviewers. If an offender registers a complaint against a staff member, that employee shall not play a part in making a decision on the request. However, this shall not prevent the employee from participating at the step one level, since this employee may be the best source from which to begin collecting information on an alleged incident. If the offender is not satisfied with the decision rendered at the first step, he should pursue his grievance to the secretary, through the chief of operations/office of adult services via the second step.

2. Communications. Offenders must be made aware of the system by oral explanation at orientation and should have the opportunity to ask questions and receive oral answers. The procedures shall be posted in writing in areas readily accessible to all offenders.

3. Written Responses. At each stage of decision and review, offenders will be provided written answers that explain the information gathered or the reason for the decision reached along with simple directions for obtaining further review.

### I. Procedure

1. Screening. The ARP screening officer shall screen all requests prior to assignment to the first step. The screening process should not unreasonably restrain the offender's opportunity to seek a remedy. If a request is rejected, it must be for one of the following reasons, which shall be noted on the request for administrative remedy (Form B-05-005-ARP-1).

a. This matter is not appealable through this process, such as:

- i. court decisions;
- ii. Parole Board/Pardon Board decisions;
- iii. Louisiana Risk Review Panel recommendations;
- iv. Lockdown Review Board (refer to Section on "applicability").

b. There are specialized administrative remedy procedures in place for this specific type of complaint, such as:

- i. disciplinary matters;
  - ii. lost property claims.
- c. It is a duplicate request.
- d. In cases where a number of offenders have filed similar or identical requests seeking administrative remedy, it is appropriate to respond only to the offender who filed the initial request. Copies of the decision sent to other offenders who filed requests simultaneously regarding the same issue will constitute a completed action. All such requests will be logged separately.

e. The complaint concerns an action not yet taken or a decision which has not yet been made.

f. The offender has requested a remedy for another offender.

g. The offender has requested a remedy for more than one incident (a multiple complaint.)

h. Established rules and procedures were not followed.

i. If an offender refuses to cooperate with the inquiry into his allegation, the request may be denied due to lack of cooperation.

j. There has been a time lapse of more than 90 days between the event and the initial request, unless waived by the warden.

k. Notice of the initial acceptance or rejection of the request shall be furnished to the offender.

2. Initiation of Process. Offenders should always try to resolve their problems within the institution informally, before initiating the formal process. This informal resolution may be accomplished through discussions with staff members, etc. If the offender is unable to resolve his problems or obtain relief in this fashion, he may initiate the formal process.

a. The method by which this process is initiated is by a letter from the offender to the warden. For purposes of this process, a letter is:

i. any form of written communication which contains this phrase: "This is a request for administrative remedy" or "ARP;" or

ii. request for administrative remedy (Form B-05-005-ARP-1) at those institutions that wish to furnish forms for commencement of this process.

b. No request for administrative remedy shall be denied acceptance into the administrative remedy procedure because it is or is not on a form; however, no letter as set forth above shall be accepted into the process unless it contains the phrase, "This is a request for administrative remedy."

c. Nothing in this procedure should serve to prevent or discourage an offender from communicating with the warden or anyone else in the Department of Public Safety and Corrections. The requirements set forth in this document for acceptance into the Administrative Remedy Procedure are solely to assure that incidents which may give rise to a cause of action will be handled through this two step system of review. All forms of communication to the warden will be handled, investigated, and responded to as the warden deems appropriate.

d. If an offender refuses to cooperate with the inquiry into his allegation, the request may be denied by noting the lack of cooperation on the appropriate step response and returning it to the offender.

3. Multiple Requests. If an offender submits multiple requests during the review of a previous request, they will be logged and set aside for handling at such time as the request currently in the system has been exhausted at the second step or until time limits to proceed from the first step to the second step have lapsed. The warden may determine whether a letter of instruction to the offender is in order.

4. Reprisals. No action shall be taken against anyone for the good faith use of or good faith participation in the procedure.

a. The prohibition against reprisals should not be construed to prohibit discipline of offenders who do not use the system in good faith. Those who file requests that are frivolous or deliberately malicious may be disciplined under the appropriate rule violation described in the DPSC "Disciplinary Rules and Procedures for Adult Offenders."

#### J. Process

1. First Step (time limit 40 days). The offender commences the process by writing a letter to the warden, in which he briefly sets out the basis for his claim, and the relief sought (refer to Section on "procedure—initiation of process" for the requirements of the letter). The offender should make a copy of his letter of complaint and retain it for his own records. The original letter will become a part of the process and will not be returned to the offender. The institution is not responsible for furnishing the offender with copies of his letter of complaint. This letter shall be written to the warden within 90 days of an alleged event. (This requirement may be waived when circumstances warrant. The warden or designee shall use reasonable judgment in such matters.) The requests shall be screened by the ARP screening officer and a notice shall be sent to the offender advising that his request is being processed or is being rejected. The warden may assign another staff person to conduct further fact-finding and/or information gathering prior to rendering his response. The warden shall respond to the offender within 40 days from the date the request is received at the first step utilizing the first step response (Form B-05-005-ARP-2).

a. For offenders wishing to continue to the second step, sufficient space will be allowed on the response to give a reason for requesting review at the next level. There is no need to rewrite the original letter of request as it will be available to all reviewers at each step of the process.

2. Second Step (time limit 45 days). An offender who is dissatisfied with the first step response (Form B-05-005-ARP-2) may appeal to the secretary of the Department of Public Safety and Corrections by so indicating that he is not satisfied in the appropriate space on the response form and forwarding it to the ARP screening officer within five days of receipt of the decision. A final decision will be made by the secretary or designee and the offender shall be notified within 45 days of receipt utilizing the second step response (Form B-05-005-ARP-3). A copy of the secretary's decision shall be sent to the warden.

a. If an offender is not satisfied with the second step response (Form B-05-005-ARP-3), he may file suit in district court. The offender must furnish the administrative remedy procedure number on the court forms.

3. Monetary Damages. The Department of Public Safety and Corrections based upon credible facts within a grievance or complaint filed by an offender, may determine that such an offender is entitled to monetary damages where monetary damages are deemed by the department as appropriate to render a fair and just remedy.

a. Upon a determination that monetary damages should be awarded, the remaining question is quantum, or the determination as to the dollar amount of the monetary damages to be awarded. The matter of determining quantum shall be transferred to the Office of Risk Management of the Division of Administration which shall then have the discretionary power to determine quantum. The

determination reached by the Office of Risk Management shall be returned to the Department of Public Safety and Corrections for a final decision. If a settlement is reached, a copy of the signed release shall be given to the warden on that same date.

4. **Deadlines and Time Limits.** No more than 90 days from the initiation to completion of the process shall elapse, unless an extension has been granted. Absent such an extension, expiration of response time limits shall entitle the offender to move on to the next step in the process. Time limits begin on the date the request is assigned to a staff member for the first step response (Form B-05-005-ARP-2).

a. An offender may request an extension in writing of up to five days in which to file at any stage of the process. This request shall be made to the ARP screening officer for an extension to initiate a request; to the warden for the first step response (Form B-05-005-ARP-2) and to the secretary through the chief of operations/office of adult services for the second step response (Form B-05-005-ARP-3). The offender must certify valid reasons for the delay, which reasons must accompany his untimely request. The issue of sufficiency of valid reasons for delay shall be addressed at each step, along with the substantive issue of the complaint.

b. The warden may request permission for an extension of not more than five days from chief of operations/office of adult services for the step one review/response. The offender must be notified in writing of such an extension.

c. In no case may the cumulative extensions exceed 25 days.

5. **Problems of an Emergency Nature.** If an offender feels he is subjected to emergency conditions, he must send an emergency request to the shift supervisor. The shift supervisor shall immediately review the request and forward the request to the level at which corrective action can be taken. All emergency requests shall be documented on an unusual occurrence report.

a. Abuse of the emergency review process by an offender shall be treated as a frivolous or malicious request and the offender shall be disciplined accordingly. Particularly, but not exclusively, matters relating to administrative transfers and time computation disputes are not to be treated as emergencies for purposes of this procedure, but shall be expeditiously handled by the shift supervisor, when appropriate.

6. **Sensitive Issues.** If the offender believes the complaint is sensitive and that he would be adversely affected if the complaint became known at the institution, he may file the complaint directly with the secretary through the chief of operations/office of adult services (second step response (Form B-05-005-ARP-3)). The offender must explain, in writing, his reason for not filing the complaint at the institution.

a. If the chief of operations/office of adult services agrees that the complaint is sensitive, he shall accept and respond to the complaint. If he does not agree that the complaint is sensitive, he shall so advise the offender in writing, and return the complaint to the warden's office. The offender shall then have five days from the date the rejection memo is received in the warden's office to submit his request through regular channels (beginning with the first

step if his complaint is acceptable for processing in the administrative remedy procedure).

7. **Records.** administrative remedy procedure records are confidential. Employees who are participating in the disposition of a request may have access to records essential to the resolution of requests. Otherwise, release of these records is governed by R.S. 15:574.12.

a. All reports, investigations, etc., other than the offender's original letter and responses, are prepared in anticipation of litigation, and are prepared to become part of the attorney's work product for the attorney handling the anticipated eventual litigation of this matter and are therefore confidential and not subject to discovery.

b. Records shall be maintained as follows.

i. A computerized log shall document the nature of each request, all relevant dates and disposition at each step. Each institution shall submit reports on Administrative Remedy Procedure activity in accordance with department policy and procedures.

ii. Individual requests and disposition, and all responses and pertinent documents shall be kept on file at the institution or at headquarters.

iii. Records shall be kept at least three years following final disposition of the request.

8. **Transferred Offenders.** When an offender has filed a request at one institution and is transferred prior to the review, or if he files a request after transfer on an action taken by the sending institution, the sending institution shall complete the processing through the first step response (Form B-05-005-ARP-2). The warden of the receiving institution shall assist in communication with the offender.

9. **Discharged Offenders.** If an offender is discharged before the review of an issue that affects the offender after discharge is completed, or if he files a request after discharge on such an issue, the institution shall complete the processing and shall notify the offender at his last known address. All other requests shall be considered moot when the offender discharges and the process shall not be completed.

10. **Annual Review.** The warden shall annually solicit comments and suggestions on the processing, the efficiency and the credibility of the administrative remedy procedure from offenders and staff. A report with the results of such review shall be provided to the chief of operations/office of adult services no later than January 31 of each year.

#### K. Lost Property Claims

1. The purpose of this Section is to establish a uniform procedure for handling "lost property claims" filed by offenders in the custody of the Department of Public Safety and Corrections. Each warden is responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this procedure and for advising offenders and affected employees of its contents.

#### L. Procedures

1. When an offender suffers a loss of personal property, he may submit a lost personal property claim (Form B-05-005-A) to the warden or designee. The claim shall include the date the loss occurred, a full statement of the circumstances which resulted in the loss of property, a list of the items which are missing, the value of each lost item and any proof of ownership or value of the property available to the offender. All claims for lost personal

property must be submitted to the warden or designee within 10 days of discovery of the loss.

2. Under no circumstances will an offender be compensated for an unsubstantiated loss, or for a loss which results from the offender's own acts or for any loss resulting from bartering, trading, selling to or gambling with other offenders.

3. The warden or designee shall assign an employee to investigate the claim. The investigative officer shall investigate the claim fully and will submit his report and recommendations to the warden or designee.

4. If a loss of an offender's personal property occurs through the negligence of the institution and/or its employees, the offender's claim may be processed in accordance with the following procedures.

a. Monetary:

i. the warden or designee shall recommend a reasonable value for the lost personal property (with the exception of personal clothing) as described on the lost personal property claim (Form B-05-005-A.);

ii. a lost personal property claim response (Form B-05-005-B) and agreement (Form B-05-005-C) shall be completed and submitted to the offender for his signature; and

iii. the claim shall be submitted to the chief of operations/office of adult services for review and final approval.

b. Non-monetary:

i. the offender is entitled only to state issue where state issued items are available;

ii. the warden or designee shall review the claim and determine whether or not the institution is responsible;

iii. a lost personal property claim response (Form B-05-005-B) shall be completed and submitted to the offender for his signature;

iv. an agreement (Form B-05-005-C) shall be completed and submitted to the offender for his signature when state issue replacement has been offered.

5. If the warden or designee determines that the institution and/or its employees are not responsible for the offender's loss of property, the claim shall be denied, and a lost personal property claim response (Form B-05-005-B) shall be submitted to the offender indicating the reason. If the offender is not satisfied with the resolution at the unit level, he may indicate by checking the appropriate box on the lost personal property claim response (Form B-05-005-B) and submitting it to the screening officer within five days of receipt. The screening officer shall provide the offender with an acknowledgment of receipt and date forwarded to the chief of operations/office of adult services. A copy of the offender's original lost personal property claim (Form B-05-005-A) and Lost Personal Property claim response (Form B-05-005-B) and other relevant documentation shall be attached.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Office of Adult Services, LR 28:857 (April 2002), amended LR 28:1993 (September 2002), amended by the Department of Public Safety and Corrections, Corrections Services LR 37:

### Family Impact Statement

Amendment to the current Rule has no known impact on family formation, stability or autonomy, as described in R.S. 49:972.

### Public Comments

Written comments may be addressed to Melissa Callahan, Deputy Assistant Secretary, Department of Public Safety and Corrections, P.O. Box 94304, Baton Rouge, LA 70804 until 4:30 p.m. on September 8, 2011.

James M. Le Blanc  
Secretary

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: Administrative Remedy Procedure

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule change will have no impact on state or local government expenditures. The proposed rule change is a technical adjustment that amends the current regulation regarding the Department's Administrative Remedy Procedure. This procedure will be used by offenders to request a formal review of a complaint relating to incarceration.

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

There will be no impact on the Revenue Collections of state or local governmental units as a result of this rule change.

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

There is no estimated cost and/or economic benefit to directly affected persons or non-governmental groups.

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

There is no estimated effect on competition and employment as a result of this rule change.

Thomas C. Bickham, III  
Undersecretary  
1108#054

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

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

#### Mullet Harvest Rules (LAC 76:VII.343)

The Wildlife and Fisheries Commission does hereby give notice of its intent to amend a Rule, LAC 76:VII.343, modifying the existing rule. Authority for adoption of this Rule is included in R.S. 56:6(25)(a), 56:325.1(a)(2), and 56:326.3. Said Rule is attached to and made part of this Notice of Intent.

### Title 76

## WILDLIFE AND FISHERIES

### Part VII. Fish and Other Aquatic Life

## Chapter 3. Saltwater Sport and Commercial Fishery

### §343. Rules for Harvest of Mullet

#### A. Seasons

1. The season for the commercial taking of mullet with a mullet strike net shall begin at sunrise of the third



Monday in October of each year and close at sunset of the third Monday in January of the following year. Mullet may not be taken commercially with a mullet strike net at any time outside of this season.

2. Mullet may be taken for live bait purposes with a commercial cast net of no more than 12 feet in radius, operated manually, during any season.

3. Commercial harvest of mullet shall not be allowed during the period from 5 a.m. on Saturday through 6 p.m. on Sunday. There shall be no commercial taking of mullet during the period after sunset and before sunrise.

#### B. Commercial Taking

1. Mullet may be taken commercially with a mullet strike net, which may not be constructed of monofilament. The commercial taking of mullet by using a mullet strike net in excess of 1,200 feet or by using more than one mullet strike net from any vessel at any time is prohibited.

2. Each mullet strike net shall have attached to it a tag issued by the department which states the name, address, and Social Security number of the owner of the net and the permit number of the permit issued to commercially take mullet with a mullet strike net. The department shall not issue any tag to a person who does not have a Social Security number.

3. Live mullet for bait purposes may be taken commercially with a cast net that shall not exceed 12 feet in radius and shall only be operated manually such that no mechanical device is used to hold open the cast net nor propel or deploy the cast net.

4. Any person commercially taking live mullet for bait purposes with a cast net must have a valid cast net gear license issued by the Department of Wildlife and Fisheries for each cast net within their possession while taking live mullet for bait purposes along with other applicable licenses.

C. Commercial Limits. During the season, there shall be no daily take or possession limit for the commercial harvest of mullet by properly licensed and permitted fishermen.

D. Recreational Limits. The daily take and possession limit for recreational harvest of mullet shall be 100 pounds per person per day.

#### E. Permits

1. The commercial taking of mullet with a mullet strike net is prohibited except by special permit issued by the Department of Wildlife and Fisheries at the cost of \$100 for residents of this state and \$400 for those who are nonresidents. This permit, along with other applicable licenses, authorizes the bearer to sell his mullet catch.

2. No person shall be issued a license or permit for the commercial taking of mullet with a mullet strike net unless that person meets all of the following requirements.

a. The person shall provide proof that he purchased a valid Louisiana commercial saltwater gill net license in any two of the years 1995, 1994, and 1993.

b. The person shall show that he derived more than 50 percent of his earned income from the legal capture and sale of seafood species in any two of the years 1995, 1994, and 1993. Proof of such income shall be provided by the applicant, using any of the methods listed below.

i. Method 1. Applicant shall submit to the Department of Wildlife and Fisheries (Licensing Section) a copy of his federal income tax return, including all attachments (e.g., Schedule C of Federal Form 1040, Form

W-2, etc.), which has been certified by the Internal Revenue Service (IRS).

ii. Method 2. Applicant shall submit to the Department of Wildlife and Fisheries (Licensing Section) a copy of his federal income tax return, including all attachments (e.g., Schedule C of Federal Form 1040, Form W-2, etc.), which has been filed and stamped "received" at a local IRS office, accompanied by a signed cover letter acknowledging receipt by the IRS.

iii. Method 3. Applicant shall submit to the Department of Wildlife and Fisheries (Licensing Section) a signed copy of his federal tax return, including all attachments (e.g., Schedule C of Federal Form 1040, Form W-2, etc.) along with an IRS-stamped transcript and IRS-signed cover letter. Transcripts are available at local IRS offices.

c. The Socioeconomic Section of the Department of Wildlife and Fisheries, Office of Management and Finance will review the submitted tax return information and determine applicant's eligibility as defined by R.S. 56:333(D)(1)(b).

d. The person shall not have applied for or received any assistance pursuant to R.S. 56:13.1(C).

3. No person shall receive more than one permit or license to commercially take mullet with a mullet strike net.

4. Notwithstanding LAC 76:VII.343.E.2, the department, upon application from an individual who is currently permitted to commercially take mullet with a mullet strike net, may transfer a valid mullet permit under the following requirements and conditions.

a. The transferee must possess and provide the department his/her Social Security number.

b. The transferee must possess a valid commercial fishing license and shall provide proof that he derived more than 50 percent of his earned income from the legal capture and sale of seafood species in the calendar year immediately prior to the year of application. Proof shall be for the tax year immediately prior to the application for transfer, and shall be in the form of an IRS transcript stamped by the local office, plus a copy of the applicant's personal file copy of his or her completed tax return for that year including all schedules and Form W-2s.

c. The transferee shall not currently possess a mullet permit to commercially take mullet with a mullet strike net nor have been permanently barred from the mullet fishery.

d. The transferor and the transferee each must certify that there shall be no financial gain realized for the transfer of such license or permit in accordance with department guidelines.

e. Any mullet permit found to have been transferred for financial gain shall be rendered void, shall immediately be surrendered to the department, and shall not be reissued.

5. In the case of a proven physical hardship, the department, upon written request from an individual who is currently permitted to commercially take mullet with a mullet strike net, may transfer a valid mullet permit into the name of the spouse, parent/legal guardian, or child/legal dependent of such person under the following requirements and conditions.

a. A mullet permit holder shall make a written request that includes the name, address and Social Security

number of both the permit holder and the person to whom the license is requested to be transferred and shall set forth in detail the reasons justifying the request.

b. The mullet permit holder must present documentation sufficient to prove relationship as being the spouse, parent/legal guardian, or child/legal dependent, between the permit holder and the person to whom the permit is to be transferred. Examples of documents tending to establish such proof would include marriage license, birth certificate and/or judgment of legal guardianship.

c. The mullet permit holder must provide a signed statement from the treating physician setting forth the specific nature and extent of the disability together with a statement that the condition prevents participation in commercial fishing activities.

6. Any person commercially taking live mullet for bait purposes must possess a valid commercial fishing license issued by the department as well as all other applicable licenses.

F. A valid mullet permit to commercially take mullet with a strike net may only be transferred from a mullet permit holder who has no pending mullet charges for violating any provisions of R.S. 56:333 or any commission rule or regulation adopted pursuant to R.S. 56:333 after August 15, 2001. The provisions of R.S. 56:333.F shall apply to permit transfer recipients. Permits under suspension or revocation shall not be transferable during any suspension or revocation period.

G. Any person who transfers a mullet permit shall be precluded thereafter from obtaining a mullet permit to commercially take mullet with a mullet strike net whether by transfer or other method.

H. General Provisions. Effective with the closure of the commercial season for the taking of mullet with a mullet strike net, there shall be a prohibition of the commercial take from Louisiana waters, and the possession of mullet on the waters of the state with commercial gear in possession except when commercially taking live mullet for bait purposes as provided for in this rule. Nothing shall prohibit the possession, sale, barter or exchange off the water of mullet legally taken during any open period provided that those who are required to do so shall maintain appropriate records in accordance with R.S. 56:306.4 and R.S. 56:345 and be properly licensed in accordance with R.S. 56:303 or R.S. 56:306.

I. In addition, all provisions of R.S. 56:333(C) are hereby adopted and incorporated into this Rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(25)(a), R.S. 56:325.1, R.S. 56:333 and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:333.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 18:1420 (December 1992), amended LR 21:37 (January 1995), LR 22:236 (March 1996), LR 24:359 (February 1998), LR 26:2332 (October 2000), LR 28:1032 (May 2002), LR 37:

#### **Family Impact Statement**

In accordance with Act 1183 of 1999, the Department of Wildlife and Fisheries/Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent: This Notice of Intent

will have no impact on the six criteria set out at R.S. 49:972(B).

#### **Public Comments**

Interested persons may submit comments relative to the proposed Rule to Jason Adriance, Fisheries Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000, or via e-mail to: jadriance@wlf.la.gov prior to Thursday, October 6, 2011.

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this Notice of Intent and the final Rule, including but not limited to, the filing of the Fiscal and Economic Impact Statements, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

Stephen W. Sagraera  
Chairman

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Mullet Harvest Rules**

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

The proposed rule amendments will have no impact on state or local governmental unit expenditures.

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

The proposed rule amendments are anticipated to increase the number of commercial cast net gear licenses sold. Therefore, an increase in revenue collections to the Conservation Fund is expected annually by an indeterminable amount. A commercial cast net gear license costs \$25 for Louisiana residents and \$100 for non-residents.

Act 65 of the 2011 Regular Legislative Session established that individuals shall be allowed to commercially harvest mullet using a cast net for the purpose of selling the mullet as live bait in Louisiana, provided individuals have obtained a commercial fishing license and a commercial cast net gear license. The rule further establishes that the Wildlife and Fisheries Commission shall institute regulations for the commercial harvest of mullet with a cast net for the purpose of selling mullet as live bait.

There is no anticipated impact on revenue collections of local governmental units as a result of the proposed rule.

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

It is anticipated that a small number of existing Louisiana commercial fishermen and businesses that handle live bait will be positively impacted by the proposed rule amendments. It is anticipated that, in response to the proposed rule amendments, these existing Louisiana commercial fishermen will expand their commercial fishing operations to include the commercial harvest of mullet with a cast net for the purpose of selling the mullet as live bait. In addition, businesses that handle live bait, such as bait dealers, will expand their operations to include the handling of live mullet.

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

The proposed rule amendments are anticipated to have minimal effect on employment in the private sector. Any

positive effect on employment in the private sector would be the result of an expansion of economic activities by Louisiana commercial fishermen or businesses that handle live bait.

Lois Azzarello  
Undersecretary  
1108#042

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

**Tuna Harvest Regulations (LAC 76:VII.361)**

The Wildlife and Fisheries Commission does hereby give notice of its intent to amend a Rule, LAC 76:VII.361, modifying the existing rule. Authority for adoption of this Rule is included in R.S. 56:6(25) (a), 56:325.1(a) (2), and 56:326.3. Said Rule is attached to and made part of this Notice of Intent.

**Title 76**

**WILDLIFE AND FISHERIES**

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

**Chapter 3. Saltwater Sport and Commercial Fishery**

**§361. Tuna—Harvest Regulations**

**A. Bag and possession limits, recreational.**

Species	Bag and Possession Limit
1. Yellowfin Tuna	3 fish per person
2. Bluefin Tuna	1 fish per vessel per year as incidental catch during open seasons.

**B. Size limits, recreational and commercial.**

**Species Minimum Size Limit**

Species	Minimum Size Limit
1. Yellowfin Tuna	27 inches Curved Fork Length (CFL)
2. Bigeye Tuna	27 inches Curved Fork Length (CFL)
3. Bluefin Tuna*	73 inches Curved Fork Length (CFL)

\*The size class of a bluefin tuna found with the head removed shall be determined using pectoral fin curved fork length (PFCFL) multiplied by a conversion factor of 1.35.

NOTE: Curved Fork Length (CFL): the length of a fish measured from the tip of the upper jaw to the fork of the tail along the contour of the body in a line that runs along the top of the pectoral fin and the top of the caudal keel. Pectoral Fin Curved Fork Length (PFCFL) means the length of a beheaded fish from the dorsal insertion of the pectoral fin to the fork of the tail measured along the contour of the body in a line that runs along the top of the pectoral fin and the top of the caudal keel.

C. No person shall take or have in their possession any species of tuna, less than the minimum size or in excess of the take or possession limits. The possession limit on tunas applies to tuna taken within or outside Louisiana territorial waters.

**D. Permits**

1. Recreational: Persons aboard a vessel whether within or outside Louisiana territorial waters possessing any of the following tuna species: Atlantic bluefin tuna, yellowfin tuna, bigeye tuna, skipjack tuna and albacore are required to have a valid federal recreational tuna permit in their immediate possession on board the vessel.

2. Commercial: Persons harvesting the following tuna species: Atlantic bluefin tuna, yellowfin tuna, bigeye tuna, skipjack tuna and albacore whether within or outside Louisiana state territorial waters for commercial purposes or possessing such tuna species in excess of a recreational take limit are required to have a valid federal commercial tuna permit in their immediate possession on board the vessel. No person shall sell, barter, trade or exchange or attempt to sell, barter, trade or exchange any species of tuna without a valid federal commercial tuna permit. No person shall purchase, barter, trade or exchange any species of tuna from any person who harvested tuna without a valid federal commercial tuna permit.

3. No person aboard any commercial vessel shall transfer or cause the transfer of fish between vessels on state or federal waters.

E. No person who, pursuant to state or federal law, is subject to the jurisdiction of this state shall violate any federal law, rule or regulation particularly those rules and regulations enacted pursuant to the Magnuson-Stevens Fishery Conservation Act and published in the Code of Federal Regulations as amended Title 50 and 15, for tunas while fishing in the EEZ, or possess, purchase, sell, barter, trade, or exchange tunas within or without the territorial boundaries of Louisiana in violation of any state or federal law, rule or regulation particularly those rules and regulations enacted pursuant to the Magnuson-Stevens Fishery Conservation Act and published in the Code of Federal Regulations as amended Title 50 and 15 law.

AUTHORITY NOTE: Promulgated in accordance with R.S.56:6(25)(a), R.S. 56:326.1, R.S. 56:326.3 and R.S. 56:320.2(C).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 26:2834 (December 2000), amended LR 27:2269 (December 2001), LR 37:

**Family Impact Statement**

In accordance with Act 1183 of 1999, the Department of Wildlife and Fisheries/Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent: This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972(B).

**Public Comments**

Interested persons may submit comments relative to the proposed rule to Jason Adriance, Fisheries Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, La 70898-9000, or via e-mail to: jadriance@wlf.la.gov prior to Thursday, October 6, 2011.

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this Notice of Intent and the final Rule, including but not limited to, the filing of the Fiscal and Economic Impact Statements, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

Stephen W. Sagrera  
Chairman

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

**RULE TITLE: Tuna Harvest Regulations**

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

The proposed rule amendments will have no impact on state or local governmental unit expenditures. The proposed rule will change the minimum size limit for taking of Bluefin Tuna from 27 inches (curved fork length) to 73 inches (curved forked length). Also, the proposed rule will establish a recreational harvest limit of one Bluefin Tuna per vessel per year during open seasons and only as an incidental catch.

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

There will be no effect on revenue to state or local governmental units from the proposed rule.

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

The proposed rule amendments will affect an indeterminable amount of Louisiana saltwater recreational anglers because they will no longer be allowed to keep 27 inch to 73 inch (curved forked length) Bluefin Tuna. In 2010, 543 vessels with a homeport in Louisiana were issued a federal permit that allowed for the recreational taking of federally designated Highly Migratory Species (HMS), including one Bluefin Tuna per vessel per year.

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

The proposed rule amendments are anticipated to have no effect on competition and employment in the public and private sectors.

Lois Azzarello  
Undersecretary  
1108#041

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

**Triploid Grass Carp (LAC 76:VII.901)**

The Department of Wildlife and Fisheries, Office of Fisheries, hereby advertises its intent to amend the rules governing exotic aquaculture species, specifically Triploid Grass Carp. The proposed amendments include reorganization of the rules and regulations for greater clarity. Additional changes would make the Triploid Grass Carp possession and transport permit valid for one year from the date of purchase and allow for the stocking of up to 500 fish, and would allow for multiple sales to the holder of a valid Triploid Grass Carp possession and transport permit for up to 500 fish. The amendments also revise the Triploid Grass Carp permit to require sellers possess a valid domestic aquatic organism license.

**Title 76**

**WILDLIFE AND FISHERIES**

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

**Chapter 9. Aquaculture**

**§901. Triploid Grass Carp**

**A. General Provisions**

1. No person, firm or corporation shall at any time possess, sell or cause to be transported into this state, triploid

grass carp (*Ctenopharyngodon idella*), except in accordance with and in compliance with the following regulations.

a. The following regulations govern the importation, transportation, possession, disposal and sale of live triploid grass carp for aquatic plant control in private and public waters, including ponds on public golf courses, municipal water treatment plants, parks and zoos. Nothing contained herein shall be construed to restrict or prevent the Department from conducting bona-fide research studies and fish and aquatic plant management programs as authorized by law or regulation.

**2. Definitions:**

*Department*—the Louisiana Department of Wildlife and Fisheries or an authorized employee of the Department.

*Permittee*—individual that possesses a valid Louisiana triploid grass carp permit. A permittee can only be a natural person. A permittee may represent himself, a business, corporation or organization. The permittee is responsible for compliance with all stipulations in the permit.

*Secretary*—the Secretary of the Louisiana Department of Wildlife and Fisheries.

*Triploid Grass Carp*—refers to *Ctenopharyngodon idella* fingerlings and larger individuals that are certified as triploid carp (3N chromosomes) by the U.S. Fish and Wildlife Service or a qualified agent or contractor approved by the Department.

*Triploid Grass Carp Possession and Transportation Permit*—the official document that identifies the terms of and allows for the importation, transportation and possession of live triploid grass carp in Louisiana for use in privately owned waterbodies.

*Triploid Grass Carp Sales Permit*—the official document that allows for the importation, transportation, possession and sale of live triploid grass carp in Louisiana as approved by the Secretary or his designee.

*Triploid Grass Carp Seller*—a properly licensed fish farmer who possesses a triploid grass carp sales permit.

**B. Triploid Grass Carp Possession and Transport Permit**

1. General Rules for Triploid Grass Carp possession and transportation permit

a. No person shall stock private waterbodies in the state of Louisiana without a Triploid Grass Carp possession and transport permit.

b. No person shall import, transport and/or purchase triploid grass carp to be brought into the state of Louisiana unless such fish are certified as triploid grass carp by the U.S. Fish and Wildlife Service or a qualified agent or contractor approved by the department.

c. No person shall import, transport or possess fingerlings less than six inches in total length or eggs or fry within the state of Louisiana.

d. Permits are not transferable from person to person or from site location to site location.

e. Permittee shall provide an adequate number of triploid grass carp to the department, at no cost to the department, upon request, to verify ploidy. The permittee shall agree to allow department officials or a department approved contractor to conduct unannounced random inspections of the transport vehicle, property, waterbody site and fish.

f. Department officials may be accompanied by other persons during these inspections. The department or its agents have the right to remove or take fish samples for analysis and/or inspection.

g. Permittee is responsible for damages caused by any escapement.

h. In cases of mortality or unavoidable loss, restocking will be permitted as long as permit is still valid.

i. If a permittee terminates the use of triploid grass carp in the permitted waterbody, the permittee shall notify the department immediately and dispose of the triploid grass carp according to methods approved by the department.

j. In addition to all other legal remedies, failure to comply with any of the provisions in this Section shall be just cause to immediately suspend and/or revoke the permittee's permit. All triploid grass carp shall be destroyed at permittee's expense under the department's supervision within 30 days of permit revocation. Violation of any of the provisions of the permit constitutes a Class Four violation in accordance with R.S. 56:319(E).

k. Any permittee charged with violation of this Section may make a written response to the alleged violation(s) to the secretary, and may request a hearing to review the alleged violation(s).

l. Qualified universities and public entities conducting research approved by or in conjunction with the department shall be exempt from fee charges.

### 2. Request Procedure for a Triploid Grass Carp possession and transport permit

a. Individuals wishing to import or possess live triploid grass carp in Louisiana, but not sell them, must apply for a Triploid Grass Carp possession and transport permit from the department for a fee of \$50.

b. The Triploid Grass Carp possession and transport permit shall be valid for one year from date of purchase. Permittee must request new permit for subsequent purchases if permit has expired.

c. Permittees may stock up to 10 fish per acre of water, and shall not exceed 500 fish. Request to stock more than 500 fish must be approved by the department through site visitations by a department representative. Fisheries staff of the Louisiana Cooperative Extension Service or other qualified fisheries professional approved by the department may be used as a substitution for departmental site visit.

### 3. Requirement for transporting and stocking of Triploid Grass Carp in private water bodies

a. Permittee must have in his immediate possession and available upon demand by department representatives, a Triploid Grass Carp possession and transportation permit when importing, transporting and/or purchasing live triploid grass carp within the state of Louisiana.

b. A bill of lading must accompany those individuals in possession of live triploid grass carp during transportation and shall include:

- i. Source of triploid grass carp (hatchery)
- ii. Name, address and phone number of seller
- iii. Name, address and phone number of buyer
- iv. Copy of triploid certification
- v. Total number of fish
- vi. Destination of shipment

c. No person shall stock private waters in the state of Louisiana without a valid Triploid Grass Carp possession and transport permit.

d. Permittee is responsible for containing triploid grass carp in his private waterbody. Permittee is also responsible for erecting barriers to prevent the escape of triploid grass carp into adjoining waters.

e. This permit does not authorize the permittee to stock Triploid Grass Carp in public waterbodies of the state. Release of any fish into the waters of the state is strictly prohibited, except as provided in Subsection D below.

### C. Triploid Grass Carp Sales Permit

#### 1. Request Procedure for a Triploid Grass Carp permit

a. Individuals wishing to sell live triploid grass carp in the state of Louisiana must first request a Triploid Grass Carp sales permit through an application furnished by the department.

b. The Triploid Grass Carp sales permit shall be valid for one year beginning January first and ending December thirty-first of that same calendar year. The permit may be purchased at any time during the year for the current permit year and beginning November fifteenth for the immediately following permit year. The cost of a Triploid Grass Carp Sales Permit is \$250.

c. An annual report detailing each sales transaction, including name and address of permitted buyer, permit number, date and number of triploid grass carp sold must be submitted with permit renewal application.

#### 2. Requirement for Triploid Grass Carp Sales Permit

a. No person shall import or cause to be imported into the state of Louisiana triploid grass carp unless certified as triploid grass carp by the U.S. Fish and Wildlife Service or a qualified agent or contractor approved by the department. Such certification must be furnished to and approved by the department prior to importing of any fish into the state of Louisiana for stocking.

b. A triploid grass carp seller must possess a valid domestic aquatic organism license.

c. The person shall ship triploid grass carp without the words "TRIPLOID GRASS CARP" prominently on at least two sides of the vehicle or hauling tank with block letters that are not less than four inches high.

d. A triploid grass carp seller is bound by the triploid grass carp possession and transportation regulations as stipulated in LAC 76:VII.901.B; except that:

i. The Triploid Grass Carp sales permit serves in lieu of the Triploid Grass Carp possession and transportation permit.

ii. The holders of a Triploid Grass Carp sales permit may only sell live triploid grass carp to holders of a valid Triploid Grass Carp possession and transportation permit or a Triploid Grass Carp sales permit.

iii. No person shall sell more than 500 triploid grass carp to an individual possessing a valid Triploid Grass Carp possession and transport permit unless otherwise stipulated by the department in the permit.

e. A triploid grass carp seller shall notify the Department at the designated telephone number (1-800-442-2511) of shipments of live triploid grass carp to permitted buyers at least 24 hours prior to shipment.

Notification shall include seller's permit number, buyer's name, address, buyer's permit number, number of fish, destination of shipment and date.

f. In addition to all other legal remedies, failure to comply with any of the provisions in this section shall be just cause to immediately suspend and/or revoke the permittee's permit. All triploid grass carp shall be destroyed at permittee's expense under the department's supervision within 30 days of permit revocation. Violation of any of the provisions of the permit constitutes a class four violation in accordance with R.S. 56:319(E).

D. Requirements for stocking Triploid Grass Carp in public (state or local) waterbodies

1. No person shall release triploid grass carp into the public waters of Louisiana without written approval of the Secretary or his designee. Individuals, organizations and local governments may request, in writing, that they be allowed to stock triploid grass carp in public waters. The Department shall review the request, and if approved, shall provide written approval signed by the secretary or his designee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:318, R.S. 56:319 and R.S. 56:319.1.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Office of Fisheries, LR 17:806 (August 1991), amended LR 19:511 (April 1993), LR 24:962 (May 1998), LR 37:

#### Family Impact Statement

In accordance with Act #1183 of 1999, the Department of Wildlife and Fisheries/Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent. This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972(B).

#### Public Comments

Interested persons may submit written comments on the amended Rule to Mr. Manuel Ruiz, Biologist DCL-A, Fisheries Extension Section, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000 no later than 4:30 p.m., Thursday, October 6, 2011.

Robert J. Barham  
Secretary

#### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Triploid Grass Carp

##### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule amendments will have no impact on state or local governmental unit expenditures. The proposed rule changes the terms of the Triploid Grass Carp Possession and Transport permit and the Triploid Grass Carp Sales permit, as well as how the permit applications are processed by the Department of Wildlife and Fisheries.

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

The proposed rule changes are anticipated to increase revenue collections deposited into the Conservation Trust Fund by \$1,125 annually. This anticipated increase in revenue is due to the proposed elimination of the renewal of existing Triploid Grass Carp Possession and Transport permits and changing the

term of the Triploid Grass Carp Possession and Transport permit from three years to one year.

No effect on revenue collections of local governmental units is anticipated as a result of the proposed rule.

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

Triploid Grass Carp Possession and Transport permit holders will be impacted due to the proposed rule amendments. The maximum number of triploid grass carp that can be stocked in a waterbody using one permit will increase from 99 to 500 fish. Also, permit holders will be able to make multiple triploid grass carp purchases using one permit, which will allow them to better manage the stocking of waterbodies.

Triploid Grass Carp Possession and Transport permit holders will be negatively affected in two ways. The term of the permit will be reduced, giving them less time to make fish purchases after a permit is issued and purchases made after the term of the initial permit will require the purchase of a new permit (\$50) instead of renewing an existing permit (\$25).

Triploid Grass Carp Sales permit holders will be positively affected because they will have the opportunity to make multiple sales to each Triploid Grass Carp Possession and Transport permit holder instead of the onetime purchase of carp under the current rules.

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

The proposed rule amendments are anticipated to have no effect on competition and employment in the public and private sectors.

Lori Azzarello  
Undersecretary  
1108#040

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

#### NOTICE OF INTENT

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

Rules of the Road for Vessels (LAC 76:XL301)

The Wildlife and Fisheries Commission does hereby give notice of its intent to repeal the Rules of the Road for Vessels. The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the Commission to promulgate and effectuate this notice of intent and the final rule, including, but not limited to, the filing of the fiscal and economic impact statement, the filing of the notice of intent and final rule and the preparation of reports and correspondence to other agencies of government.

#### Title 76

#### WILDLIFE AND FISHERIES

#### Part XI. Boating

#### Chapter 3. Boating Safety

#### §301. Rules of the Road for Vessels

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:851.27A.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 29:1835 (September 2003), repealed LR 37:0000 (August 2011).

#### Family Impact Statement

In accordance with Act #1183 of 1999, the Department of Wildlife and Fisheries/Wildlife and Fisheries Commission

hereby issues its Family Impact Statement in connection with the preceding Notice of Intent: This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972(B).

#### Public Comments

Interested persons may submit written comments on the proposed Rule to Lt. Col. Jeff Mayne, Enforcement Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA, 70898-9000 no later than Wednesday, October 5, 2011.

Stephen W. Sagraera  
Chairman

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Rules of the Road for Vessels

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule amendments will have no impact on state or local governmental unit expenditures. Act 264 of the 2011 Regular Session of the Louisiana Legislature incorporated the existing language in Wildlife and Fisheries Title 76:XI.301 into Louisiana Revised Statute 34:851.4. Wildlife and Fisheries Title 76:XI.301 defines how vessels should be operated on Louisiana waterways, including but not limited to rules for how vessels should interact and how vessels should be operated in wake zones and near landing docks. The purpose of this rule is to remove language in Wildlife and Fisheries Title 76 that is now redundant with Louisiana Revised Statute 34:851.4.

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

There will be no effect on revenue to state or local governmental units as a result of the proposed rule change.

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

There will be no costs and/or economic benefits to directly affected persons or non-governmental groups.

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

The proposed rule amendments will have no effect on competition and employment in the public and private sectors.

Lois Azzarello  
Undersecretary  
1108#043

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Workforce Commission Office of Workers' Compensation

#### Pharmaceutical Billing (LAC 40:I:2915)

Notice is hereby given, in accordance with R.S. 49:950 et seq., that the Louisiana Workforce Commission, Office of Workers Compensation, pursuant to the authority vested in the Director of the Office of Workers' Compensation by R.S. 23:1310.1 and in accordance with applicable provisions of the Administrative provisions Act, proposes to amend LAC 40:2915. The proposed Rule change will provide a greater degree of clarity as to the amount charged and amount being

reimbursed between payors and pharmacies. The proposed enactment is set forth below.

#### Title 40

#### LABOR AND EMPLOYMENT

#### Part I. Workers' Compensation Administration

#### Subpart 2. Medical Guidelines

#### Chapter 29. Pharmacy Reimbursement Schedule, Billing Instruction and Maintenance Procedures

#### §2915. Billing Instructions

A. Pharmaceutical billing must occur on either the CMS 1500 or a company invoice. Billing document will include the following minimum information:

1. claimant name;
2. claimant address;
3. unique claimant identifier;
4. date prescription was filled;
5. national drug code;
6. drug name;
7. drug quantity;
8. total charge;
9. number of days prescribed;
10. prescribing providers name;
11. prescribing providers NPI;
12. pharmacists name;
13. dispensing facility address;
14. dispensing facility phone number;
15. medication charge; and
16. dispensing fee charge.

B. Entities issuing reimbursement documentation will include the following information:

1. claimant name;
2. claimant address;
3. unique claimant identifier;
4. date prescription was filled;
5. national drug code;
6. drug name;
7. amount charged per prescription;
8. total amount charged;
9. individual drug reimbursement;
10. total bill reimbursement;
11. individual tax reimbursement;
12. total tax reimbursement;
13. total amount reimbursed;
14. payor name;
15. payor address; and;
16. payor phone number.

C. - C.35. ...

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

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation, LR 19:54 (January 1993), repromulgated LR 19:212 (February 1993), amended LR 20:1299 (November 1994), amended by the Workforce Commission, Office of Workers' Compensation, LR 37:

#### Family Impact Statement

1. The Effect on the Stability of the Family. The proposed pharmacy rules for the Office of Workers' Compensation Administration will have no effect on the stability of the family.

2. The Effect on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. The proposed pharmacy rules for the Office of Workers' Compensation Administration will have no effect on the

authority and rights of parents regarding the education and supervision of their children.

3. The Effect on the Functioning of the Family. The proposed pharmacy rules for the Office of Workers' Compensation Administration will have no effect on the functioning of the family.

4. The Effect on Family Earnings and Family Budget. The proposed pharmacy rules for the Office of Workers' Compensation Administration will have no effect on family earnings and family budget.

5. The Effect on the Behavior and Personal Responsibility of Children. The proposed pharmacy Rule for the Office of Workers' Compensation Administration will have no effect on the behavior and personal responsibility of children.

6. The Ability of the Family or a Local Government to Perform the Function as Contained in the Proposed Rule. The family or a local government is not able to perform the functions contained in the proposed pharmacy rules for the Office of Workers' Compensation Administration.

#### **Public Comments**

Inquiries concerning the proposed enactment may be directed to Director, Office of Workers' Compensation Administration, Louisiana Workforce Commission, P.O. Box 94040, Baton Rouge, LA 70804-9040. Interested parties may submit data, views, arguments, information or comments on the proposed enactment in writing to the Louisiana Workforce Commission, P.O. Box 94040, Baton Rouge, LA 70804-9040., Attention: Director, 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.

Curt Eysink  
Executive Director

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

### **RULE TITLE: Pharmaceutical Billing**

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

There will be no additional administrative costs associated with the promulgation of this rule. The rule change only deals with information contained in billing documents between non-governmental groups, i.e. pharmacies and entities issuing reimbursement documentation. Accordingly, the promulgation of the rules is not expected to provide any additional costs or savings for the Office of Workers' Compensation.

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

The implementation of the billing instruction rule change will have no effect on revenue collections of state or local governmental units.

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

The implementation of billing instructions rule changes requires entities issuing reimbursement documentation to provide at least 15 pieces of information in its reimbursement documentation. Presently, reimbursement documentation is not required. As such, it may be necessary for some entities to update/implement billing procedures in order to be able to supply this information. An estimation of the costs associated with the process would be subjective to each entity and speculative. It is not anticipated that the requirement of additional information will impact the amount of payments received.

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

There is no anticipated effect on competition and employment.

Wes Hataway  
Director  
1108#087

Gregory V Albrecht  
Chief Economist  
Legislative Fiscal Office



# Potpourri

## POTPOURRI

### Department of Agriculture and Forestry Horticulture Commission

#### Landscape Architect Registration Exam

The next landscape architect registration examination will be given December 5-6, 2011, beginning at 7:45 a.m. at the Nelson Memorial Building, Louisiana State University Campus, Baton Rouge, LA. The deadline for sending the application and fee is as follows.

New Candidates: September 2, 2011  
Re-Take Candidates: September 23, 2011  
Reciprocity Candidates: November 4, 2011

Further information pertaining to the examinations may be obtained from Craig Roussel, Director, Horticulture Commission, P.O. Box 3596, Baton Rouge, LA 70821-3596, phone (225) 952-8100.

Any individual requesting special accommodations due to a disability should notify the office prior to September 23, 2011. Questions may be directed to (225) 952-8100.

Mike Strain, DVM  
Commissioner

1108#008

## POTPOURRI

### Department of Environmental Quality Office of the Secretary

#### Denial Of Petition For Rulemaking Under LAC 33:I.909.B.2

The Louisiana Department of Environmental Quality (LDEQ) received a Petition for Rulemaking (Petition) dated May 5, 2011 requesting that the LDEQ institute formal rulemaking to regulate fossil fuel carbon dioxide emissions. A copy of the petition and LDEQ's responses are available on LDEQ's Electronic Data Management System at: [www.deq.louisiana.gov/portal/tabid/2604/Default.aspx](http://www.deq.louisiana.gov/portal/tabid/2604/Default.aspx). After consideration of the Petition, the LDEQ has decided to deny the petition for the following reasons:

- the issue is one better addressed through comprehensive federal legislation to avoid possible conflicting regulations at the state level;
- the United States Environmental Protection Agency has already taken action to require emissions reporting for facilities emitting fossil fuel carbon dioxide.

For questions about the above denial of the Petition for Rulemaking, please call Perry Theriot at 225-219-3985.

Herman Robinson, CPM  
Executive Counsel

1108#044

## POTPOURRI

### Office of the Governor Division of Administration Office of Information Technology

#### OIT Bulletin Published

Pursuant to LAC 4:XV.501 et seq., the Office of Information Technology (OIT) published the following bulletin(s) in the period 08/01/2011 to 08/31/2011:

Bulletin Number	Topic	Date
ITB 11-01	IT Standard 6-01, Desktop Configuration, Revised 2011PC and Printer IT Request and Budgeting Guidelines	08/01/2011

This bulletin provides updated configuration and pricing guidelines for the procurement of PC and printer hardware. These guidelines are applicable during budget preparation, as well as for mid-year requests as of 8/1/2011.

OIT bulletins, standards, guidelines and policies are posted on the OIT website at: <http://www.doa.louisiana.gov/oit/index.htm>.

To receive e-mail notifications when an OIT bulletin is published, register at: [http://www.doa.louisiana.gov/oit/email\\_notifications.htm](http://www.doa.louisiana.gov/oit/email_notifications.htm).

Ed Driesse,  
Chief Information Officer

1108#014

## POTPOURRI

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

#### Physician Assistants—Practice (LAC 46:XLV.4507)

Notice of a public hearing was previously provided in the July Edition of the *Louisiana Register*, Vol. 37, No. 7, pp. 2285-2286 (July 20, 2011), advising that the Louisiana State Board of Medical Examiners (the "board") was convening a public hearing on August 29, 2012, at 8 a.m. with respect to the proposed Rule amendments set forth therein. The year for the hearing set forth in the notice (2012) was an error. Therefore, the board takes this opportunity to provide this corrected notice that the public hearing will be held on August 29, 2011, at 8 a.m. at the board's offices, 1515 Poydras Street, Suite 2700, New Orleans, LA 70112, to provide all interested persons an opportunity to attend and orally present data, views, comments and arguments with respect to the proposed Rule amendments which were

previously noticed in the July 20, 2011 edition of the *Louisiana Register*, Vol. 37, No. 7, pp. 2285-2286.

Robert L. Marier, M.D.  
Executive Director

1108#055

**POTPOURRI**

**Department of Health and Hospitals  
Office of Public Health  
Nutrition Services**

Special Supplemental Nutrition Program for Women, Infants and Children (WIC)

The Office of Public Health, in accordance with federal regulations at 7 CFR 246.4(a)(28)(b), gives notice that the annual Louisiana WIC State Plan is now available to the public for review and comment. Copies of the plan may be obtained by writing Denise Harris, WIC Director, Office of Public Health, 628 N. Fourth Street, Bin #4, Baton Rouge, LA 70821, by telephone at (225) 342-8064 or by e-mail at denise.harris@la.gov. Written comments concerning the WIC state plan are due no later than 4:30 p.m., September 20, 2011, and should be submitted to Denise Harris, Office of Public Health, Nutrition Services Program 628 N. Fourth Street, Bin #4, Baton Rouge, LA 70821 or by fax to (225) 342-8312.

Bruce Greenstein  
Secretary

1108#088

**POTPOURRI**

**Department of Natural Resources  
Office of Conservation**

Orphaned Oilfield Sites

Office of Conservation records indicate that the oilfield sites listed in the table below have met the requirements as set forth by section 91 of Act 404, R.S. 30:80 et seq., and as such are being declared orphaned oilfield sites.

Operator	Field	District	Well Name	Well Number	Serial Number
C.H. Lyon et al	Sugar Creek	S	Sallie Lloyd	A-1	21126
Pacific Atlantic Oil Co.	Monroe	M	Graylin G/N/	006	149985
Pengo Petroleum, Inc.	Potash	L	Orleans Levee District	001	36113(30)
Murphy - Sun	Wildcat -N.O. LA Monroe Dist.	M	Lulah E. Clark	001	32017

Operator	Field	District	Well Name	Well Number	Serial Number
McDannald Oil Company	Port Barre	L	Sibille	001	23843(29)

James H. Welsh  
Commissioner

1108#050

**POTPOURRI**

**Department of Natural Resources  
Office of the Secretary  
Fishermen's Gear Compensation Fund**

Loran Coordinates

In accordance with the provisions of R.S. 56:700.1 et seq., notice is given that 2 claims in the amount of \$6,292.94 were received for payment during the period July 1, 2011 - July 31, 2011.

There were 1 paid and 1 denied.

Latitude/Longitude Coordinates of reported underwater obstructions are:

2935.379 9001.655 Jefferson  
2948.566 8932.356 Saint Bernard

A list of claimants and amounts paid can be obtained from Gwendolyn Thomas, Administrator, Fishermen's Gear Compensation Fund, P.O. Box 44277, Baton Rouge, LA 70804 or you can call (225) 342-0122.

Scott A. Angelle  
Secretary

1108#012

**POTPOURRI**

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

Calcasieu Lake Oyster Harvester Permit  
Proposed Changes to LAC 76:VII.533

The Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission hereby give notice that they are seeking to incorporate a change to the Notice of Intent relative to the proposed rule regarding Calcasieu Lake Oyster Harvester Permit, LAC 76:VII.533, which was originally published in the July 20, 2011 issue of the *Louisiana Register* (pages 2294-2295). The change to the proposed Rule involves the period for which the permit is valid, the licenses and permits required for applicants to be eligible, and the method by which the permit is applied for. Copies of the proposed change can be viewed by contacting Mr. Patrick Banks, (225) 765-2370. Interested persons may submit their written comments on the proposed change to Mr. Patrick Banks, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, Louisiana, 70898 no later than 4:30 p.m., Thursday, September 1, 2011.

A public hearing to receive comments on the amended Notice of Intent for Calcasieu Lake Oyster Harvester Permit will be held during the Wildlife and Fisheries Commission Meeting to be held on Thursday, September 1, 2011. The meeting will begin at 9:30 a.m. and will be held in the Louisiana Room of the department's headquarters building, 2000 Quail Drive, Baton Rouge, LA, 70808.

Stephen W. Sagraera  
Chairman

1108#021

**POTPOURRI**

**Workforce Commission  
Office of Workers' Compensation Administration**

**Average Weekly Wage Rate**

Pursuant to Act 583 of the Regular session of the 1975 Louisiana Legislature, this state's average weekly wage upon which the maximum workers' compensation weekly benefit amount will be based, effective September 1, 2011 has been determined by the Louisiana Workforce Commission to be \$789.

Wes Hataway  
Director

1108#010

**POTPOURRI**

**Workforce Commission  
Office of Workers' Compensation Administration**

**Weekly Compensation Benefits Limits**

Pursuant to R.S. 23:1202 and based on the statewide average weekly wage as determined by the Louisiana Workforce Commission the following limits shall apply to weekly compensation benefits for claimants injured during the period September 1, 2011 through August 31, 2012.

Average Weekly Wage	Maximum Compensation	Minimum Compensation	Mileage Reimbursement
\$789.00	\$592.00	\$158.00	* .51 cents per mile

\*Effective July 1, 2011 the mileage reimbursement is .51 cents per mile pursuant to R.S. 23:1203 D.

Wes Hataway  
Director

1108#009

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