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Executive Orders

EXECUTIVE ORDER BJ 11-05

Coordinated System of Care Governance Board

WHEREAS, the Coordinated System of Care (CSoC) is a cross-departmental project of the Office of Juvenile Justice, the Department of Children and Family Services, the Department of Health and Hospitals and the Department of Education to organize a coordinated network of broad, effective services for Louisiana's at-risk children and youth with significant behavioral health challenges or related disorders;

WHEREAS, the CSoC was originally established to:

A. Improve the overall outcomes of these children and their caretakers being served by the Coordinated System of Care.

B. Reduce the state's cost of providing services by leveraging Medicaid and other funding sources as well as increasing service effectiveness and reducing duplication across agencies.

C. Reduce out-of-home placements in the current number and future admissions of children and youth with significant behavioral health challenges or co-occurring disorders.

WHEREAS, it is in the best interests of the citizens of the State of Louisiana to implement this centralized and coordinated effort through the CSoC Governance Board;

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 Coordinated System of Care Governance Board (hereafter "Board") is established within the Louisiana Department of Health and Hospitals to govern the CSoC.

SECTION 2: The Board shall set policy for the governance of the CSoC. The duties of the Board shall include, but are not limited to, the following:

- A. Establishing policy and monitoring adherence;
- B. Setting standards;
- C. Defining target populations;
- D. Providing multi-departmental oversight;
- E. Directing use of multiple funding sources;
- F. Directing the implementing agencies; and
- G. Monitoring the quality, cost and adherence to standards.

SECTION 3: The Board shall be composed of nine (9) members as follows:

A. The secretary of the Department of Children & Family Services, or the secretary's designee;

B. The secretary of the Department of Health and Hospitals, or the secretary's designee;

C. The superintendent of the Department of Education, or the superintendent's designee;

D. The Deputy Secretary of the Department of Public Safety and Corrections, Youth Services, Office of Juvenile Justice, or the Deputy Secretary's designee.

E. One (1) representative from the Governor's Office or his designee;

F. Two (2) family representatives;

G. One (1) non-voting youth representative; and

H. One (1) advocate representative.

SECTION 4: The chair of the Board shall be an agency head and a member of the Board. All board officers shall be elected by and from the membership of the Board.

SECTION 5: The Board shall meet at regularly scheduled intervals (at a minimum of six times annually), and at the call of the chair.

SECTION 6:

A. Board members who are an employee or an elected public official of the State of Louisiana or a political subdivision thereof may seek reimbursement of travel expenses, in accordance with PPM 49, from their employing and/or elected department, agency and/or office.

B. Board members who are not employees of the State of Louisiana or a political subdivision of the State of Louisiana may seek reimbursement of travel expenses, in accordance with PPM 49, from DHH.

SECTION 7: All departments, commissions, boards, offices, entities, agencies, and officers of the State of Louisiana, or any political subdivision thereof, are authorized and directed to cooperate with the Board in implementing and maintaining the provisions of this Order, including the execution of memorandums of understanding and the redirection of the designated funding of the agencies involved to finance the CSoC. This process will be fiscally managed by the Louisiana Bureau of Health Services Financing.

SECTION 8: The Bureau of Health Services Financing (BHSF) within DHH, shall continue to serve as the "single state agency" as defined in the federal regulations. As such, BHSF shall be responsible for assuring compliance with all Title XIX requirements.

SECTION 9: This Order is effective upon signature and shall continue in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 3rd day of March, 2011.

Bobby Jindal
Governor

ATTEST BY
THE GOVERNOR
Jay Dardenne
Secretary of State
1103#114

Emergency Rules

DECLARATION OF EMERGENCY

**Department of Health and Hospitals
Bureau of Health Services Financing
and
Office of Aging and Adult Services**

All Inclusive Care for the Elderly
Reimbursement Rate Reduction
(LAC 50:XXIII.1301)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amend LAC 50:XXIII.1301 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, Office of the Secretary, Bureau of Health Services Financing amended the provisions governing the Program of All Inclusive Care for the Elderly (PACE) to: 1) remove the requirement that eligibility decisions be approved by the state administering agency; 2) revise PACE disenrollment criteria; 3) allow for service area specific rates instead of one statewide rate; and 4) clarify when the obligation for patient liability begins (*Louisiana Register*, Volume 33, Number 5).

As a result of a budgetary shortfall in state fiscal year 2011, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for PACE to reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 8). This Emergency Rule is being promulgated to continue the provisions of the August 1, 2010 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective March 31, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amend the provisions governing the reimbursement methodology for the Program of All Inclusive Care for the Elderly to reduce the reimbursement rates.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXIII. All Inclusive Care for the Elderly

Chapter 13. Reimbursement

§1301. Payment

A. - J.3. ...

K. Effective for dates of service on or after August 1, 2010, the monthly capitated amount paid to a PACE organization shall be reduced by 2 percent of the capitated amount on file as of July 31, 2010.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act and 42 CFR 460 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:250 (February 2004), amended LR 33:850 (May 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, 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

1103#077

DECLARATION OF EMERGENCY

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

Ambulatory Surgical Centers
Reimbursement Rate Reduction
(LAC 50:XI.7503)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XI.7503 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 ambulatory surgical centers to reduce the reimbursement rates paid for ambulatory surgical services (*Louisiana Register*, Volume 36, Number 10).

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 ambulatory surgical centers to further reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 8). The department promulgated an Emergency Rule which amended the provisions of the August 1, 2010 Emergency Rule to revise the formatting of LAC 50:XI.7503 as a result of the promulgation of the October 20, 2010 final Rule governing ambulatory surgical centers (*Louisiana Register*, Volume 36, Number 11). This Emergency Rule is being promulgated to continue the provisions of the November 20, 2010 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective March 21, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for ambulatory surgical centers to reduce the reimbursement rates.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XI. Clinic Services

Subpart 11. Ambulatory Surgical Centers

Chapter 75. Reimbursement

§7503. Reimbursement Methodology

A. - D. ...

E. Effective for dates of service on or after August 1, 2010, the reimbursement for surgical services provided by an ambulatory surgical center shall be reduced by 4.4 percent of the fee amounts on file as of July 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 35:1889 (September 2009), amended LR 36:2278 (October 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

1103#078

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Early and Periodic Screening, Diagnosis and Treatment
Dental Program—Covered Services and Reimbursement
Rate Reduction (LAC 50:XV.6903 and 6905)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50: XV.6903 and §6905 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 in the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program to reduce the reimbursement fees (*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 EPSDT dental services to further reduce the reimbursement rates. In addition, this emergency rule also amended the provisions governing the covered services and reimbursement methodology for the EPSDT Dental Program to include an additional dental procedure (*Louisiana Register*, Volume 36, Number 8). 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.6905 as a result of the promulgation of the September 20, 2010 final Rule governing EPSDT dental services (*Louisiana Register*, Volume 36, Number 11). This Emergency Rule is being promulgated to continue the provisions of the November 20, 2010 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance program.

Effective March 11, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for EPSDT dental services.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XV. Services for Special Populations
Subpart 5. Early and Periodic Screening,
Diagnosis and Treatment

Chapter 69. Dental Services

§6903. Covered Services

A. - D. ...

E. Effective August 1, 2010, the prefabricated esthetic coated stainless steel crown-primary tooth dental procedure shall be included in the service package for coverage under the EPSDT Dental 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, Office of the Secretary, Bureau of Health Services Financing, LR 29:175 (February 2003), amended LR 30:252 (February 2004), LR 31:667 (March 2005), LR 33:1138 (June 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1889 (September 2009), amended LR 36:

§6905. Reimbursement

A. - D.3. ...

E. Effective for dates of service on or after August 1, 2010, the reimbursement fees for EPSDT dental services 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 following oral evaluation services:
 - a. periodic oral examination;
 - b. oral examination—patients under three years of age; and
 - c. comprehensive oral examination—new patient;
2. 65 percent for the following annual and periodic diagnostic and preventive services:
 - a. radiographs—periapical, first film;
 - b. radiograph—periapical, each additional film;
 - c. radiograph—panoramic film;
 - d. prophylaxis—adult and child;
 - e. topical application of fluoride—adult and child (prophylaxis not included); and
 - f. topical fluoride varnish, therapeutic application for moderate to high caries risk patients (under 6 years of age);
3. 50 percent for the following diagnostic and adjunctive general services:
 - a. oral/facial images;
 - b. non-intravenous conscious sedation; and
 - c. hospital call; and
4. 58 percent for the remainder of the dental services.

F. Removable prosthodontics and orthodontic services are excluded from the August 1, 2010 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 33:1138 (June 2007), amended LR 34:1032 (June 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1890 (September 2009), amended LR 36:2040 (September 2010)

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

1103#079

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

End Stage Renal Disease Facilities
Reimbursement Rate Reduction
(LAC 50:XI.6901 and 6903)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XI.6901 and §6903 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 end stage renal disease (ESRD) facilities to reduce the reimbursement rates (*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 ESRD facilities to further reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 8). The department promulgated an Emergency Rule which amended the provisions of the August 1, 2010 Emergency Rule to revise the formatting of LAC 50:XI.6901-6903 as a result of the promulgation of the September 20, 2010 final Rule governing ESRD facilities. (*Louisiana Register*, Volume 36, Number 11). This Emergency Rule is being promulgated to continue the provisions of the November 20, 2010 Emergency Rule. This action is being taken to avoid a budget deficit in the Medicaid Program.

Effective March 21, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for end stage renal disease facilities to reduce the reimbursement rates.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XI. Clinic Services

Subpart 9. End Stage Renal Disease Facilities

Chapter 69. Reimbursement

§6901. Non-Medicare Claims

A. - D. ...

E. Effective for dates of service on or after August 1, 2010, the reimbursement to ESRD facilities shall be reduced by 4.6 percent of the rates in effect on July 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 30:1022 (May 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1891 (September 2009), amended LR 36:2040 (September 2010), LR 37:

§6903. Medicare Part B Claims

A. - D. ...

E. Effective for dates of service on or after August 1, 2010, the reimbursement to ESRD facilities for Medicare Part B claims shall be reduced by 4.6 percent of the rates in effect on July 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 35:1891 (September 2009), amended LR 36:2040 (September 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

1103#080

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Family Planning Clinics—Reimbursement Rate Reduction (LAC 50:XI.3501)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XI.3501 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 Human Resources, Office of Family Services adopted a Rule which established the method of payment for services rendered by mental health clinics, substance abuse clinics and family planning clinics (*Louisiana Register*, Volume 4, Number 5). The provisions governing family planning clinic services were repromulgated in their entirety for inclusion in the *Louisiana Administrative Code* (*Louisiana Register*, Volume 30, Number 5).

As a result of a budgetary shortfall in state fiscal year 2011, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for family planning clinics to reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 8). This Emergency Rule is being promulgated to continue the provisions of the August 1, 2010 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective March 31, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for family planning clinics to reduce the reimbursement rates.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XI. Clinic Services

Subpart 5. Family Planning

Chapter 35. Reimbursement

§3501. Reimbursement Methodology

A. The reimbursement for family planning clinics is a flat fee for each covered service as specified on the established Medicaid fee schedule. Fee schedule rates are based on a percentage of the Louisiana Medicare Region 99 allowable for a specified year.

1. - 2. Repealed.

B. Effective for dates of service on or after August 1, 2010, the reimbursement rates for family planning clinic services shall be 75 percent of the 2009 Louisiana Medicare Region 99 allowable or billed charges, whichever is the lesser amount minus any third party liability coverage.

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 30:1022 (May 2004), 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.

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

1103#081

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Family Planning Waiver Reimbursement Rate Reduction (LAC 50:XXII.2701)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XXII.2701 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 family planning waiver services to reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 10).

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 family planning waiver services to further reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 8). The department promulgated an Emergency Rule which amended the provisions of the August 1, 2010 Emergency Rule to revise the formatting of LAC 50:XXII.2701 as a result of the promulgation of the October 20, 2010 final Rule governing family planning waiver services (*Louisiana Register*, Volume 36, Number 11). This Emergency Rule is being promulgated to continue the provisions of the November 20, 2010 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective March 21, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for family planning waiver services.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXII. 1115 Demonstration Waivers

Subpart 3. Family Planning Waiver

Chapter 27. Reimbursement

§2701. Reimbursement Methodology

A. - B. ...

C. Effective for dates of service on or after August 1, 2010, the reimbursement rates for services provided in the Family Planning Waiver shall be reduced by 4.6 percent of the rates in effect on July 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 32:1461 (August 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2280 (October 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

1103#082

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing and

Office of Aging and Adult Services

Home and Community-Based Services Waivers Adult Day Health Care—Reimbursement Rate Reduction (LAC 50:XXI.2915)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amend LAC 50:XXI.2915 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, Office of Aging and Adult Services amended the provisions governing the Adult Day Health Care (ADHC) Waiver to redefine and clarify the provisions of the waiver relative to the target population, the request for services registry, the comprehensive plan of care, and support coordination services (*Louisiana Register*, Volume 34, Number 10). The October 20, 2008 Rule also amended the provisions governing the reimbursement methodology to reduce the comprehensive ADHC rate paid to providers as a result of adding support coordination as a separate service since these services were traditionally reimbursed as part of the comprehensive ADHC rate. These provisions were repromulgated in December 2009 to correct an error of omission in the publication (*Louisiana Register*, Volume 34, Number 12).

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 the Adult Day Health Care Waiver to reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 8). This Emergency Rule is being promulgated to continue the provisions of the August 1, 2010 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective March 31, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amend the provisions governing the Adult Day Health Care Waiver to reduce the reimbursement rates.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXI. Home and Community-Based Services Waivers

Subpart 3. Adult Day Health Care

Chapter 29. Reimbursement

§2915. Provider Reimbursement

A. - D.2. ...

E. Effective for dates of service on or after August 1, 2010, the reimbursement rates for ADHC services shall be reduced by 2 percent of the rates in effect on July 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 Aging and Adult Services, LR 34:2170 (October 2008), repromulgated LR 34:2575 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, 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

1103#083

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing and Office of Aging and Adult Services

Home and Community-Based Services Waivers
Elderly and Disabled Adults—Reimbursement Rate
Reduction (LAC 50:XXI.9101, 9107-9121)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amend LAC 50:XXI.9101 and adopts §§9107-9121 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 2009, the department amended the provisions governing the reimbursement methodology for the Elderly and Disabled Adult (EDA) Waiver to reduce the reimbursement rates paid for designated services (*Louisiana Register*, Volume 35, 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 EDA Waiver services to further reduce the reimbursement rates for personal assistance and adult day health care services and adopted provisions governing the reimbursement for adult day health care services (*Louisiana Register*, Volume 36, Number 8). This Emergency Rule is being promulgated to continue the provisions of the August 1, 2010 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective March 31, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amend the provisions governing the reimbursement methodology for EDA Waiver services to reduce the reimbursement rates and adopt provisions governing the reimbursement for adult day health care services.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXI. Home and Community Based Services
Waivers

Subpart 7. Elderly and Disabled Adults

Chapter 91. Reimbursement

Subchapter A. General Provisions

§9101. Reimbursement Methodology

A. Reimbursement for EDA Waiver services, with the exception of ADHC services, shall be a prospective flat rate for each approved unit of service provided to the recipient. Adult day health care services shall be reimbursed according to the provisions of Subchapter B of this Chapter 91.

B. - C. ...

D. Effective for dates of service on or after August 1, 2010, the reimbursement rates for personal assistance services in the EDA Waiver shall be reduced by 2 percent of the rates on file as of July 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 Aging and Adult Services, LR 34:251 (February 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:1893 (September 2009), amended LR 37:

Subchapter B. Adult Day Health Care Services
Reimbursement

§9107. General Provisions

A. Providers of adult day health care services shall be reimbursed a per diem rate for services rendered under a prospective payment system (PPS). The system shall be designed in a manner that recognizes and reflects the cost of direct care services provided. The reimbursement methodology is designed to improve the quality of care for waiver recipients by ensuring that direct care services are provided at an acceptable level while fairly reimbursing the providers.

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

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

§9109. Cost Reporting

A. Cost Centers Components

1. Direct Care Costs. This component reimburses for in-house and contractual direct care staffing and fringe benefits and direct care supplies.

2. Care Related Costs. This component reimburses for in-house and contractual salaries and fringe benefits for activity and social services staff, raw food costs and care related supplies for activities and social services.

3. Administrative and Operating Costs. This component reimburses for in-house or contractual salaries and related benefits for administrative, dietary, housekeeping and maintenance staff. Also included are:

- a. utilities;
- b. accounting;
- c. dietary;
- d. housekeeping and maintenance supplies; and
- e. all other administrative and operating type expenditures.

4. Property. This component reimburses for depreciation, interest on capital assets, lease expenses, property taxes and other expenses related to capital assets.

B. Providers of ADHC services are required to file acceptable annual cost reports of all reasonable and allowable costs. An acceptable cost report is one that is prepared in accordance with the requirements of this Section and for which the provider has supporting documentation necessary for completion of a desk review or audit. The annual cost reports are the basis for determining reimbursement rates. A copy of all reports and statistical data must be retained by the center for no less than five years following the date reports are submitted to the bureau. A chart of accounts and an accounting system on the accrual basis or converted to the accrual basis at year end are required in the cost report preparation process. The bureau or its designee will perform desk reviews of the cost reports. In addition to the desk review, a representative number of the facilities shall be subject to a full-scope, annual on-site audit. All ADHC cost reports shall be filed with a fiscal year from July 1 through June 30.

C. The cost reporting forms and instructions developed by the bureau must be used by all facilities participating in the Louisiana Medicaid Program who render ADHC services. Hospital based and other provider based facilities which use Medicare forms for step down in completing their ADHC Medicaid cost reports must submit copies of the applicable Medicare cost report forms also. All amounts must be rounded to the nearest dollar and must foot and cross foot. Only per diem cost amounts will not be rounded. Cost reports submitted that have not been rounded in accordance with this policy will be returned and will not be considered as received until they are resubmitted.

D. Annual Reporting. Cost reports are to be filed on or before the last day of September following the close of the reporting period. Should the due date fall on a Saturday, Sunday, or an official state or federal holiday, the due date shall be the following business day. The cost report forms and schedules must be filed in duplicate together with two copies of the following documents:

1. a working trial balance that includes the appropriate cost report line numbers to which each account can be traced. This may be done by writing the cost report category and line numbers by each ending balance or by running a trial balance in cost report category and line number order that totals the account;

2. a depreciation schedule. The depreciation schedule which reconciles to the depreciation expense reported on the cost report must be submitted. If the center files a home office cost report, copies of the home office depreciation schedules must also be submitted with the home office cost report. All hospital based facilities must submit two copies of a depreciation schedule that clearly shows and totals assets that are hospital only, ADHC only and shared assets;

3. an amortization schedule(s), if applicable;

4. a schedule of adjustment and reclassification entries;

5. a narrative description of purchased management services and a copy of contracts for managed services, if applicable;

6. For management services provided by a related party or home office, a description of the basis used to

allocate the costs to providers in the group and to non-provider activities and copies of the cost allocation worksheet, if applicable. Costs included that are for related management/home office costs must also be reported on a separate cost report that includes an allocation schedule; and

7. all allocation worksheets must be submitted by hospital-based facilities. The Medicare worksheets that must be attached by facilities using the Medicare forms for allocation are:

- a. A;
- b. A-6;
- c. A-7 parts I, II and III;
- d. A-8;
- e. A-8-1;
- f. B part 1; and
- g. B-1.

E. Each copy of the cost report must have the original signatures of an officer or center administrator on the certification. The cost report and related documents must be submitted to the address indicated on the cost report instruction form. In order to avoid a penalty for delinquency, cost reports must be postmarked on or before the due date.

F. When it is determined, upon initial review for completeness, that an incomplete or improperly completed cost report has been submitted, the provider will be notified. The provider will be allowed a specified amount of time to submit the requested information without incurring the penalty for a delinquent cost report. For cost reports that are submitted by the due date, 10 working days from the date of the provider's receipt of the request for additional information will be allowed for the submission of the additional information. For cost reports that are submitted after the due date, five working days from the date of the provider's receipt of the request for additional information will be allowed for the submission of the additional information. An exception exists in the event that the due date comes after the specified number of days for submission of the requested information. In these cases, the provider will be allowed to submit the additional requested information on or before the due date of the cost report. If requested additional information has not been submitted by the specified date, a second request for the information will be made. Requested information not received after the second request may not be subsequently submitted and shall not be considered for reimbursement purposes. An appeal of the disallowance of the costs associated with the requested information may not be made. Allowable costs will be adjusted to disallow any expenses for which requested information is not submitted.

G. Accounting Basis. The cost report must be prepared on the accrual basis of accounting. If a center is on a cash basis, it will be necessary to convert from a cash basis to an accrual basis for cost reporting purposes. Particular attention must be given to an accurate accrual of all costs at the year-end for the equitable distribution of costs to the applicable period. Care must be given to the proper allocation of costs for contracts to the period covered by such contracts. Amounts earned although not actually received and amounts owed to creditors but not paid must be included in the reporting period.

H. Supporting Information. Providers are required to maintain adequate financial records and statistical data for

proper determination of reimbursable costs. Financial and statistical records must be maintained by the center for five years from the date the cost report is submitted to the Bureau. Cost information must be current, accurate and in sufficient detail to support amounts reported in the cost report. This includes all ledgers, journals, records, and original evidences of cost (canceled checks, purchase orders, invoices, vouchers, inventories, time cards, payrolls, bases for apportioning costs, etc.) that pertain to the reported costs. Census data reported on the cost report must be supportable by daily census records. Such information must be adequate and available for auditing.

I. Employee Record

1. The provider shall retain written verification of hours worked by individual employees.

a. Records may be sign-in sheets or time cards, but shall indicate the date and hours worked.

b. Records shall include all employees even on a contractual or consultant basis.

2. Verification of criminal background check.

3. Verification of employee orientation and in-service training.

4. Verification of the employee's communicable disease screening.

J. Billing Records

1. The provider shall maintain billing records in accordance with recognized fiscal and accounting procedures. Individual records shall be maintained for each client. These records shall meet the following criteria.

a. Records shall clearly detail each charge and each payment made on behalf of the client.

b. Records shall be current and shall clearly reveal to whom charges were made and for whom payments were received.

c. Records shall itemize each billing entry.

d. Records shall show the amount of each payment received and the date received.

2. The provider shall maintain supporting fiscal documents and other records necessary to ensure that claims are made in accordance with federal and state requirements.

K. Non-acceptable Descriptions. "Miscellaneous", "other" and "various", without further detailed explanation, are not acceptable descriptions for cost reporting purposes. If any of these are used as descriptions in the cost report, a request for information will not be made and the related line item expense will be automatically disallowed. The provider will not be allowed to submit the proper detail of the expense at a later date, and an appeal of the disallowance of the costs may not be made.

L. Exceptions. Limited exceptions to the cost report filing requirements will be considered on an individual provider basis upon written request from the provider to the Bureau of Health Services Financing, Rate and Audit Review Section. If an exception is allowed, the provider must attach a statement describing fully the nature of the exception for which prior written permission was requested and granted. Exceptions which may be allowed with written approval are as follows.

1. If the center has been purchased or established during the reporting period, a partial year cost report may be filed in lieu of the required 12-month report.

2. If the center experiences unavoidable difficulties in preparing the cost report by the prescribed due date, an extension may be requested prior to the due date. Requests for exception must contain a full statement of the cause of the difficulties that rendered timely preparation of the cost report impossible.

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

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

§9111. Cost Categories Included in the Cost Report

A. Direct Care (DC) Costs

1. Salaries, Aides—gross salaries of certified nurse aides and nurse aides in training.

2. Salaries, LPNs—gross salaries of nonsupervisory licensed practical nurses and graduate practical nurses.

3. Salaries, RNs—gross salaries of nonsupervisory registered nurses and graduate nurses (excluding director of nursing and resident assessment instrument coordinator).

4. Salaries, Social Services—gross salaries of nonsupervisory licensed social services personnel providing medically needed social services to attain or maintain the highest practicable physical, mental, or psychosocial well being of the residents.

5. Salaries, Activities—gross salaries of nonsupervisory activities/recreational personnel providing an ongoing program of activities designed to meet, in accordance with the comprehensive assessment, the interest and the physical, mental, and psychosocial well being of the residents.

6. Payroll Taxes—cost of employer's portion of Federal Insurance Contribution Act (FICA), Federal Unemployment Tax Act (FUTA), State Unemployment Tax Act (SUTA), and Medicare tax for direct care employees.

7. Group Insurance, DC—cost of employer's contribution to employee health, life, accident and disability insurance for direct care employees.

8. Pensions, DC—cost of employer's contribution to employee pensions for direct care employees.

9. Uniform Allowance, DC—employer's cost of uniform allowance and/or uniforms for direct care employees.

10. Worker's Comp, DC—cost of worker's compensation insurance for direct care employees.

11. Contract, Aides—cost of aides through contract that are not center employees.

12. Contract, LPNs—cost of LPNs and graduate practical nurses hired through contract that are not center employees.

13. Contract, RNs—cost of RNs and graduate nurses hired through contract that are not center employees.

14. Drugs, Over-the-Counter and Legend—cost of over-the-counter and legend drugs provided by the center to its residents. This is for drugs not covered by Medicaid.

15. Medical Supplies—cost of patient-specific items of medical supplies such as catheters, syringes and sterile dressings.

16. Medical Waste Disposal—cost of medical waste disposal including storage containers and disposal costs.

17. Other Supplies, DC—cost of items used in the direct care of residents which are not patient-specific such as recreational/activity supplies, prep supplies, alcohol pads,

betadine solution in bulk, tongue depressors, cotton balls, thermometers, and blood pressure cuffs.

18. Allocated Costs, Hospital Based—the amount of costs that have been allocated through the step-down process from a hospital or state institution as direct care costs when those costs include allocated overhead.

19. Total Direct Care Costs—sum of the above line items.

B. Care Related (CR) Costs

1. Salaries—gross salaries for care related supervisory staff including supervisors or directors over nursing, social service and activities/recreation.

2. Salaries, Dietary—gross salaries of kitchen personnel including dietary supervisors, cooks, helpers and dishwashers.

3. Payroll Taxes—cost of employer's portion of Federal Insurance Contribution Act (FICA), Federal Unemployment Tax Act (FUTA), State Unemployment Tax Act (SUTA), and Medicare tax for care related employees.

4. Group Insurance, CR—cost of employer's contribution to employee health, life, accident and disability insurance for care related employees.

5. Pensions, CR—cost of employer's contribution to employee pensions for care related employees.

6. Uniform Allowance, CR—employer's cost of uniform allowance and/or uniforms for care related employees.

7. Worker's Comp, CR—cost of worker's compensation insurance for care related employees.

8. Barber and Beauty Expense—the cost of barber and beauty services provided to patients for which no charges are made.

9. Consultant Fees, Activities—fees paid to activities personnel, not on the center's payroll, for providing advisory and educational services to the center.

10. Consultant Fees, Nursing—fees paid to nursing personnel, not on the center's payroll, for providing advisory and educational services to the center.

11. Consultant Fees, Pharmacy—fees paid to a registered pharmacist, not on the center's payroll, for providing advisory and educational services to the center.

12. Consultant Fees, Social Worker—fees paid to a social worker, not on the center's payroll, for providing advisory and educational services to the center.

13. Consultant Fees, Therapists—fees paid to a licensed therapist, not on the center's payroll, for providing advisory and educational services to the center.

14. Food, Raw—cost of food products used to provide meals and snacks to residents. Hospital based facilities must allocate food based on the number of meals served.

15. Food, Supplements—cost of food products given in addition to normal meals and snacks under a doctor's orders. Hospital based facilities must allocate food-supplements based on the number of meals served.

16. Supplies, CR—the costs of supplies used for rendering care related services to the patients of the center. All personal care related items such as shampoo and soap administered by all staff must be included on this line.

17. Allocated Costs, Hospital Based—the amount of costs that have been allocated through the step-down process from a hospital or state institution as care related costs when those costs include allocated overhead.

18. Total Care Related Costs—the sum of the care related cost line items.

19. Contract, Dietary—cost of dietary services and personnel hired through contract that are not employees of the center.

C. Administrative and Operating Costs (AOC)

1. Salaries, Administrator—gross salary of administrators excluding owners. Hospital based facilities must attach a schedule of the administrator's salary before allocation, the allocation method, and the amount allocated to the nursing center.

2. Salaries, Assistant Administrator—gross salary of assistant administrators excluding owners.

3. Salaries, Housekeeping—gross salaries of housekeeping personnel including housekeeping supervisors, maids and janitors.

4. Salaries, Laundry—gross salaries of laundry personnel.

5. Salaries, Maintenance—gross salaries of personnel involved in operating and maintaining the physical plant, including maintenance personnel or plant engineers.

6. Salaries, Drivers—gross salaries of personnel involved in transporting clients to and from the center.

7. Salaries, Other Administrative—gross salaries of other administrative personnel including bookkeepers, receptionists, administrative assistants and other office and clerical personnel.

8. Salaries, Owner or Owner/Administrator—gross salaries of all owners of the center that are paid through the center.

9. Payroll Taxes—cost of employer's portion of Federal Insurance Contribution Act (FICA), Federal Unemployment Tax Act (FUTA), State Unemployment Tax Act (SUTA), and Medicare tax for administrative and operating employees.

10. Group Insurance, AOC—cost of employer's contribution to employee health, life, accident and disability insurance for administrative and operating employees.

11. Pensions, AOC—cost of employer's contribution to employee pensions for administration and operating employees.

12. Uniform Allowance, AOC—employer's cost of uniform allowance and/or uniforms for administration and operating employees.

13. Worker's Compensation, AOC—cost of worker's compensation insurance for administration and operating employees.

14. Contract, Housekeeping—cost of housekeeping services and personnel hired through contract that are not employees of the center.

15. Contract, Laundry—cost of laundry services and personnel hired through contract that are not employees of the center.

16. Contract, Maintenance—cost of maintenance services and persons hired through contract that are not employees of the center.

17. Consultant Fees, Dietician—fees paid to consulting registered dietitians.

18. Accounting Fees—fees incurred for the preparation of the cost report, audits of financial records, bookkeeping, tax return preparation of the adult day health care center and

other related services excluding personal tax planning and personal tax return preparation.

19. Amortization Expense, Non-Capital—costs incurred for legal and other expenses when organizing a corporation must be amortized over a period of 60 months. Amortization of costs attributable to the negotiation or settlement of the sale or purchase of any capital asset on or after July 18, 1984, whether by acquisition or merger, for which any payment has previously been made are nonallowable costs. If allowable cost is reported on this line, an amortization schedule must be submitted with the cost report.

20. Bank Service Charges—fees paid to banks for service charges, excluding penalties and insufficient funds charges.

21. Dietary Supplies—costs of consumable items such as soap, detergent, napkins, paper cups, straws, etc., used in the dietary department.

22. Dues—dues to one organization are allowable.

23. Educational Seminars and Training—the registration cost for attending educational seminars and training by employees of the center and costs incurred in the provision of in-house training for center staff, excluding owners or administrative personnel.

24. Housekeeping Supplies—cost of consumable housekeeping items including waxes, cleaners, soap, brooms and lavatory supplies.

25. Insurance, Professional Liability and Other—includes the costs of insuring the center against injury and malpractice claims.

26. Interest Expense, Non-Capital and Vehicles—interest paid on short term borrowing for center operations.

27. Laundry Supplies—cost of consumable goods used in the laundry including soap, detergent, starch and bleach.

28. Legal Fees—only actual and reasonable attorney fees incurred for non-litigation legal services related to patient care are allowed.

29. Linen Supplies—cost of sheets, blankets, pillows, gowns, under-pads and diapers (reusable and disposable).

30. Miscellaneous—costs incurred in providing center services that cannot be assigned to any other line item on the cost report. Examples of miscellaneous expense are small equipment purchases, all employees' physicals and shots, nominal gifts to all employees, such as a turkey or ham at Christmas, allowable advertising, and flowers purchased for the enjoyment of the clients. Items reported on this line must be specifically identified.

31. Management Fees and Home Office Costs—the cost of purchased management services or home office costs incurred that are allocable to the provider. Costs included that are for related management/home office costs must also be reported on a separate cost report that includes an allocation schedule.

32. Nonemergency Medical Transportation—the cost of purchased nonemergency medical transportation services including, but not limited to, payments to employees for use of personal vehicle, ambulance companies and other transportation companies for transporting patients of the center.

33. Office Supplies and Subscriptions—cost of consumable goods used in the business office such as:

- a. pencils, paper and computer supplies;
- b. cost of printing forms and stationery including, but not limited to, nursing and medical forms, accounting and census forms, charge tickets, center letterhead and billing forms;
- c. cost of subscribing to newspapers, magazines and periodicals.

34. Postage—cost of postage, including stamps, metered postage, freight charges and courier services.

35. Repairs and Maintenance—supplies and services, including electricians, plumbers, extended service agreements, etc., used to repair and maintain the center building, furniture and equipment except vehicles. This includes computer software maintenance.

36. Taxes and Licenses—the cost of taxes and licenses paid that are not included on any other line on Form 6. This includes tags for vehicles, licenses for center staff (including nurse aide re-certifications) and buildings.

37. Telephone and Communications—cost of telephone services, wats lines and fax services.

38. Travel—cost of travel (airfare, lodging, meals, etc.) by the administrator and other authorized personnel to attend professional and continuing educational seminars and meetings or to conduct center business. Commuting expenses and travel allowances are not allowable.

39. Vehicle Expenses—vehicle maintenance and supplies, including gas and oil.

40. Utilities—cost of water, sewer, gas, electric, cable TV and garbage collection services.

41. Allocated Costs, Hospital Based—costs that have been allocated through the step-down process from a hospital as administrative and operating costs.

42. Total Administrative and Operating Costs.

D. Property and Equipment

1. Amortization Expense, Capital—legal and other costs incurred when financing the center must be amortized over the life of the mortgage. Amortization of goodwill is not an allowable cost. Amortization of costs attributable to the negotiation or settlement of the sale or purchase of any capital asset on or after July 18, 1984, whether by acquisition or merger, for which any payment has previously been made are nonallowable costs. If allowable cost is reported on this line, an amortization schedule must be submitted with the cost report.

2. Depreciation—depreciation on the center's buildings, furniture, equipment, leasehold improvements and land improvements.

3. Interest Expense, Capital—interest paid or accrued on notes, mortgages, and other loans, the proceeds of which were used to purchase the center's land, buildings and/or furniture, equipment and vehicles.

4. Property Insurance—cost of fire and casualty insurance on center buildings, equipment and vehicles. Hospital-based facilities and state-owned facilities must allocate property insurance based on the number of square feet.

5. Property Taxes—taxes levied on the center's buildings, equipment and vehicles. Hospital-based facilities

and state-owned facilities must allocate property insurance based on the number of square feet.

6. Rent, Building—cost of leasing the center's real property.

7. Rent, Furniture and Equipment—cost of leasing the center's furniture and equipment, excluding vehicles.

8. Lease, Automotive—cost of leases for vehicles used for patient care. A mileage log must be maintained. If a leased vehicle is used for both patient care and personal purposes, cost must be allocated based on the mileage log.

9. Allocated Costs, Hospital Based—costs that have been allocated through the step-down process from a hospital or state institution as property costs when those costs include allocated overhead.

10. Total Property and Equipment.

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

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

§9113. Allowable Costs

A. Allowable costs include those costs incurred by providers to conform to state licensure and federal certification standards. General cost principles are applied during the desk review and audit process to determine allowable costs.

1. These general cost principles include determining whether the cost is:

- a. ordinary, necessary, and related to the delivery of care;
- b. what a prudent and cost conscious business person would pay for the specific goods or services in the open market or in an arm's length transaction; and
- c. for goods or services actually provided to the center.

B. Through the desk review and/or audit process, adjustments and/or disallowances may be made to a provider's reported costs. The Medicare Provider Reimbursement Manual is the final authority for allowable costs unless the department has set a more restrictive policy.

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

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

§9115. Nonallowable Costs

A. Costs that are not based on the reasonable cost of services covered under Medicare and are not related to the care of recipients are considered nonallowable costs.

B. Reasonable cost does not include the following:

1. costs not related to client care;
2. costs specifically not reimbursed under the program;
3. costs that flow from the provision of luxury items or services (items or services substantially in excess or more expensive than those generally considered necessary for the provision of the care);
4. costs that are found to be substantially out of line with other centers that are similar in size, scope of services and other relevant factors;
5. costs exceeding what a prudent and cost-conscious buyer would incur to purchase the goods or services.

- C. General nonallowable costs:
1. services for which Medicaid recipients are charged a fee;
 2. depreciation of non-client care assets;
 3. services that are reimbursable by other state or federally funded programs;
 4. goods or services unrelated to client care;
 5. unreasonable costs.
- D. Specific nonallowable costs (this is not an all inclusive listing):
1. advertising—costs of advertising to the general public that seeks to increase patient utilization of the ADHC center;
 2. bad debts—accounts receivable that are written off as not collectible;
 3. contributions—amounts donated to charitable or other organizations;
 4. courtesy allowances;
 5. director’s fees;
 6. educational costs for clients;
 7. gifts;
 8. goodwill or interest (debt service) on goodwill;
 9. costs of income producing items such as fund raising costs, promotional advertising, or public relations costs and other income producing items;
 10. income taxes, state and federal taxes on net income levied or expected to be levied by the federal or state government;
 11. insurance, officers—cost of insurance on officers and key employees of the center when the insurance is not provided to all employees;
 12. judgments or settlements of any kind;
 13. lobbying costs or political contributions, either directly or through a trade organization;
 14. non-client entertainment;
 15. non-Medicaid related care costs—costs allocated to portions of a center that are not licensed as the reporting ADHC or are not certified to participate in Title XIX;
 16. officers’ life insurance with the center or owner as beneficiary;
 17. payments to the parent organization or other related party;
 18. penalties and sanctions—penalties and sanctions assessed by the Centers for Medicare and Medicaid Services, the Internal Revenue Service or the State Tax Commission; insufficient funds charges;
 19. personal comfort items; and
 20. personal use of vehicles.

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

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

§9117. Audits

A. Each provider shall file an annual center cost report and, if applicable, a central office cost report.

B. The provider shall be subject to financial and compliance audits.

C. All providers who elect to participate in the Medicaid Program shall be subject to audit by state or federal regulators or their designees. Audit selection shall be at the discretion of the department.

1. The department conducts desk reviews of all of the cost reports received and also conducts on-site audits of provider cost reports.

2. The records necessary to verify information submitted to the department on Medicaid cost reports, including related-party transactions and other business activities engaged in by the provider, must be accessible to the department’s audit staff.

D. In addition to the adjustments made during desk reviews and on-site audits, the department may exclude or adjust certain expenses in the cost report data base in order to base rates on the reasonable and necessary costs that an economical and efficient provider must incur.

E. The center shall retain such records or files as required by the department and shall have them available for inspection for five years from the date of service or until all audit exceptions are resolved, whichever period is longer.

F. If a center’s audit results in repeat findings and adjustments, the department may:

1. withhold vendor payments until the center submits documentation that the non-compliance has been resolved;
2. exclude the provider’s cost from the database used for rate setting purposes; and
3. impose civil monetary penalties until the center submits documentation that the non-compliance has been resolved.

G. If the department’s auditors determine that a center’s financial and/or census records are unauditible, the vendor payments may be withheld until the center submits auditable records. The provider shall be responsible for costs incurred by the department’s auditors when additional services or procedures are performed to complete the audit.

H. Vendor payments may also be withheld under the following conditions:

1. a center fails to submit corrective action plans in response to financial and compliance audit findings within 15 days after receiving the notification letter from the department; or
 2. a center fails to respond satisfactorily to the department’s request for information within 15 days after receiving the department’s notification letter.
1. The provider shall cooperate with the audit process by:
1. promptly providing all documents needed for review;
 2. providing adequate space for uninterrupted review of records;
 3. making persons responsible for center records and cost report preparation available during the audit;
 4. arranging for all pertinent personnel to attend the closing conference;
 5. insuring that complete information is maintained in client’s records;
 6. developing a plan of correction for areas of noncompliance with state and federal regulations immediately after the exit conference time limit of 30 days.

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

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

§9119. Exclusions from the Database

A. The following providers shall be excluded from the database used to calculate the rates:

1. providers with disclaimed audits; and
2. providers with cost reports for periods other than a 12-month period.

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

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

§9121. Provider Reimbursement

A. Cost Determination Definitions

Adjustment Factor—computed by dividing the value of the index for December of the year preceding the rate year by the value of the index one year earlier (December of the second preceding year).

Base Rate—calculated in accordance with §9121.B.5, plus any base rate adjustments granted in accordance with §9121.B.7 which are in effect at the time of calculation of new rates or adjustments.

Base Rate Components—the base rate is the summation of the following:

- a. direct care;
- b. care related costs;
- c. administrative and operating costs; and
- d. property costs.

Indices—

a. CPI, All Items—the Consumer Price Index for All Urban Consumers-South Region (All Items line) as published by the United States Department of Labor.

b. CPI, Medical Services—the Consumer Price Index for All Urban Consumers-South Region (Medical Services line) as published by the United States Department of Labor.

B. Rate Determination

1. The base rate is calculated based on the most recent audited or desk reviewed cost for all ADHC providers filing acceptable full year cost reports.

2. Audited and desk reviewed costs for each component are ranked by center to determine the value of each component at the median.

3. The median costs for each component are multiplied in accordance with §9121.B.4 then by the appropriate economic adjustment factors for each successive year to determine base rate components. For subsequent years, the components thus computed become the base rate components to be multiplied by the appropriate economic adjustment factors, unless they are adjusted as provided in §9121.B.7 below. Application of an inflationary adjustment to reimbursement rates in non-rebasing years shall apply only when the state legislature allocates funds for this purpose. The inflationary adjustment shall be made prorating allocated funds based on the weight of the rate components.

4. The inflated median shall be increased to establish the base rate median component as follows.

a. The inflated direct care median shall be multiplied times 115 percent to establish the direct care base rate component.

b. The inflated care related median shall be multiplied times 105 percent to establish the care related base rate component.

c. The administrative and operating median shall be multiplied times 105 percent to establish the administrative and operating base rate component.

5. At least every three years, audited and desk reviewed cost report items will be compared to the rate components calculated for the cost report year to insure that the rates remain reasonably related to costs.

6. Formulae. Each median cost component shall be calculated as follows.

a. Direct Care Cost Component. Direct care per diem costs from all acceptable full year cost reports, except those for which an audit disclaimer has been issued, shall be arrayed from lowest to highest. The cost at the midpoint of the array shall be the median cost. Should there be an even number of arrayed cost, an average of the two midpoint centers shall be the median cost. The median cost shall be trended forward using the Consumer Price Index for Medical Services. The direct care rate component shall be set at 115 percent of the inflated median.

i. For dates of service on or after February 9, 2007, and extending until the ADHC rate is rebased using a cost report that begins after July 1, 2007, the center-specific direct care rate will be increased by \$1.11 to include a direct care service worker wage enhancement. It is the intent that this wage enhancement be paid to the direct care service workers.

b. Care Related Cost Component. Care related per diem costs from all acceptable full year cost reports, except those for which an audit disclaimer has been issued, shall be arrayed from lowest to highest. The cost of the center at the midpoint of the array shall be the median cost. Should there be an even number of arrayed cost, an average of the two midpoint centers shall be the median cost. The median cost shall be trended forward using the Consumer Price Index for All Items. The care related rate component shall be set at 105 percent of the inflated median.

c. Administrative and Operating Cost Component. Administrative and operating per diem cost from all acceptable full year cost reports, except those for which an audit disclaimer has been issued, shall be arrayed from lowest to highest. The cost of the midpoint of the array shall be the median cost. Should there be an even number of arrayed cost, an average of the two midpoint centers shall be the median cost. The median cost shall be trended forward by dividing the value of the CPI-All Items index for December of the year preceding the base rate year by the value of the index for the December of the year preceding the cost report year. The administrative and operating rate component shall be set at 105 percent of the inflated median.

d. Property Cost Component. The property per diem costs from all acceptable full year cost reports, except those for which an audit disclaimer has been issued, shall be arrayed from lowest to highest. The cost at the midpoint of the array shall be the median cost. This will be the rate component. Inflation will not be added to property costs.

7. Interim Adjustments to Rates. If an unanticipated change in conditions occurs that affects the cost of at least 50 percent of the enrolled ADHC providers by an average of five percent or more, the rate may be changed. The department will determine whether or not the rates should be changed when requested to do so by 25 percent or more of the enrolled providers, or an organization representing at

least 25 percent of the enrolled providers. The burden of proof as to the extent and cost effect of the unanticipated change will rest with the entities requesting the change. The department may initiate a rate change without a request to do so. Changes to the rates may be temporary adjustments or base rate adjustments as described below.

a. Temporary Adjustments. Temporary adjustments do not affect the base rate used to calculate new rates.

i. Changes Reflected in the Economic Indices. Temporary adjustments may be made when changes which will eventually be reflected in the economic indices, such as a change in the minimum wage, a change in FICA or a utility rate change, occur after the end of the period covered by the indices, i.e., after the December preceding the rate calculation. Temporary adjustments are effective only until the next annual base rate calculation.

ii. Lump Sum Adjustments. Lump sum adjustments may be made when the event causing the adjustment requires a substantial financial outlay, such as a change in certification standards mandating additional equipment or furnishings. Such adjustments shall be subject to the bureau's review and approval of costs prior to reimbursement.

b. Base Rate Adjustment. A base rate adjustment will result in a new base rate component value that will be used to calculate the new rate for the next fiscal year. A base rate adjustment may be made when the event causing the adjustment is not one that would be reflected in the indices.

8. Provider Specific Adjustment. When services required by these provisions are not made available to the recipient by the provider, the department may adjust the prospective payment rate of that specific provider by an amount that is proportional to the cost of providing the service. This adjustment to the rate will be retroactive to the date that is determined by the department that the provider last provided the service and shall remain in effect until the department validates, and accepts in writing, an affidavit that the provider is then providing the service and will continue to provide that service.

C. Cost Settlement. The direct care cost component shall be subject to cost settlement. The direct care floor shall be equal to 90 percent of the median direct care rate component trended forward for direct care services (plus 90 percent of any direct care incentive added to the rate). The Medicaid Program will recover the difference between the direct care floor and the actual direct care amount expended. If a provider receives an audit disclaimer, the cost settlement for that year will be based on the difference between the direct care floor and the lowest direct care per diem of all facilities in the most recent audited and/or desk reviewed database trended forward to the rate period related to the disclaimer.

D. Support Coordination Services Reimbursement. Support coordination services previously provided by ADHC providers and included in the rate, including the Minimum Data Set Home Care (MDS/HC), the social assessment, the nursing assessment, the CPOC and home visits will no longer be the responsibility of the ADHC provider. Support coordination services shall be provided as a separate service covered in the waiver. As a result of the change in responsibilities, the rate paid to providers shall be adjusted accordingly.

1. Effective January 1, 2009, the rate paid to ADHC providers on December 31, 2008 shall be reduced by \$4.67 per day which is the cost of providing support coordination services separately.

2. This rate reduction will extend until such time that the ADHC provider's rate is rebased using cost reports that do not reflect the cost of delivering support coordination services.

E. Effective for dates of service on or after August 1, 2010, the reimbursement rate for ADHC services provided in the EDA Waiver shall be reduced by 2 percent of the rates in effect on July 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 and the Office of Aging and Adult Services, LR 36:

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

Interested persons may submit written comments to 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

1103#084

DECLARATION OF EMERGENCY

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

Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers
New Opportunities Waiver—Reimbursement Rate
Reduction (LAC 50:XXI.14301)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend LAC 50:XXI.14301 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 and the Office for Citizens with Developmental Disabilities amended the provisions governing the reimbursement methodology for the New Opportunities Waiver (NOW) to reduce the reimbursement rates paid for NOW services (*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 the New Opportunities Waiver to further reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 8). This Emergency Rule is being promulgated to continue the provisions of the August 1, 2010 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective March 31, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for the New Opportunities Waiver to further reduce the reimbursement rates.

Title 50

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

Subpart 11. New Opportunities Waiver

Chapter 143. Reimbursement

§14301. Reimbursement Methodology

A. - I. ...

J. Effective for dates of service on or after August 1, 2010, the reimbursement rates for New Opportunity 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. environmental accessibility adaptations;
- b. specialized medical equipment and supplies;
- c. personal emergency response systems;
- d. one-time transitional expenses; and
- e. individualized and family support services—night and shared night.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1209 (June 2004), amended by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 34:252 (February 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 35:1851 (September 2009), amended LR 36:1247 (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.

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

1103#085

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 amends 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 now proposes to amend the May 1, 2010 Emergency Rule to incorporate the provisions of the August 1, 2010 Emergency Rule. This action is being taken to ensure that these provisions are appropriately adopted into the Louisiana Administrative Code.

Effective April 19, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amends the provisions of the May 1, 2010 Emergency Rule 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. 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. ROW opportunities will be offered to individuals in the following targeted population groups:

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

2. individuals 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.

B. ROW opportunities will be offered to:

1. children who are currently residing in a Medicaid enrolled nursing facility and will be participating in the MFP Rebalancing Demonstration; and

2. individuals who are currently residing in a Medicaid enrolled facility that goes through the ICF-DD bed conversion process.

C. After an individual is offered a ROW opportunity, 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.

1. If the individual is determined to be ineligible, either financially or medically, that individual shall be notified in writing.

- a. - c. Repealed.

2. A waiver opportunity shall be assigned to an individual when eligibility is established and the individual is certified.

C.3. - 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.

1.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 though 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 five 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.

F.1. - I.1. ...

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

2.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 five 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.

3.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 living 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.

E.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;

C.2.d.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 two 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 adaption 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

1103#086

DECLARATION OF EMERGENCY

**Department of Health and Hospitals
Bureau of Health Services Financing
and
Office for Citizens with Developmental Disabilities**

**Home and Community-Based Services Waivers
Supports Waiver—Reimbursement Rate Reduction
(LAC 50:XXI.6101)**

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend LAC 50:XXI.6101 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 and the Office for Citizens with Developmental Disabilities amended the provisions governing the reimbursement methodology for Supports Waiver services to reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 10).

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 Supports Waiver services to further reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 8). The department promulgated an Emergency Rule which amended the provisions of the August 1, 2010 Emergency Rule to revise the formatting of LAC 50:XXI.6101 as a result of the promulgation of the October 20, 2010 final Rule governing the Supports Waiver (*Louisiana Register*, Volume 36, Number 11). This Emergency Rule is being promulgated to continue the provisions of the November 20, 2010 Emergency Rule. This action is being taken to avoid a budget deficit in the Medicaid Program.

Effective March 21, 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 reimbursement methodology for Supports Waiver services to reduce the reimbursement rates.

Title 50

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

Waivers

Subpart 5. Supports Waiver

Chapter 61. Reimbursement Methodology

§6101. Reimbursement Methodology

A. - K.1. ...

L. Effective for dates of service on or after August 1, 2010, the reimbursement rates for Supports Waiver services shall be reduced by 2 percent of the rates on file as of July 31, 2010.

1. Support coordination services and personal emergency response system services shall be 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, Office for Citizens with Developmental Disabilities, LR 32:1607 (September 2006), amended LR 34:662 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:2281 (October 2010), 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

1103#087

DECLARATION OF EMERGENCY

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

**Inpatient Hospital Services—Neonatal and Pediatric
Intensive Care Units and Outlier Payment Methodologies
(LAC 50:V.953-954 and 967)**

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.953-954 and §967 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 rendered by non-rural, non-state hospitals to align the prospective per diem rates more closely with reported costs, including the neonatal intensive care unit (NICU) and pediatric intensive care unit (PICU) rates (*Louisiana Register*, Volume 35, Number 9).

The Department of Health and Hospitals, Bureau of Health Services Financing repromulgated all of the provisions governing outlier payments for inpatient hospital services in a codified format for inclusion in the *Louisiana Administrative Code* (*Louisiana Register*, Volume 36, Number 3).

The department now proposes to amend the provisions governing the reimbursement methodology for inpatient hospital services to adjust the reimbursement rates paid for NICU and PICU services rendered by non-rural, non-state hospitals and to revise the outlier payment methodology. This action is being taken to promote the health and welfare of Medicaid recipients by maintaining access to neonatal and pediatric intensive care unit services and encouraging the continued participation of hospitals in the Medicaid Program. It is estimated that implementation of this Emergency Rule will increase expenditures in the Hospital Program for acute care hospital services by approximately \$45,000,000 and will reduce expenditures for outlier payments by approximately \$45,000,000; therefore, the overall fiscal impact for implementation of this Emergency Rule is estimated to be cost neutral for the Medicaid Program in state fiscal year 2010-2011.

Effective March 1, 2011 the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for inpatient hospital services to adjust the reimbursement rates paid to non-rural, non-state hospitals for neonatal and pediatric intensive care unit services and to revise the provisions governing outlier payments.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Chapter 9. Non-Rural, Non-State Hospitals

Subchapter B. Reimbursement Methodology

§953. Acute Care Hospitals

A. - G. ...

H. Neonatal Intensive Care Units (NICU)

1. - 2. ...

3. Effective for dates of service on or after March 1, 2011, the per diem rates for Medicaid inpatient services rendered by NICU Level III and NICU Level III regional units, recognized by the department as such on December 31, 2010, shall be adjusted to include an increase that varies based on the following five tiers:

a. Tier 1. If the qualifying hospital's average percentage exceeds 10 percent, the additional per diem increase shall be \$601.98;

b. Tier 2. If the qualifying hospital's average percentage is less than or equal to 10 percent, but exceeds 5 percent, the additional per diem increase shall be \$624.66;

c. Tier 3. If the qualifying hospital's average percentage is less than or equal to 5 percent, but exceeds 1.5 percent, the additional per diem increase shall be \$419.83;

d. Tier 4. If the qualifying hospital's average percentage is less than or equal to 1.5 percent, but greater than 0 percent, and the hospital received greater than .25 percent of the outlier payments for dates of service in state fiscal year (SFY) 2008 and SFY 2009 and calendar year 2010, the additional per diem increase shall be \$263.33; or

e. Tier 5. If the qualifying hospital received less than .25 percent, but greater than 0 percent of the outlier payments for dates of service in SFY 2008 and SFY 2009 and calendar year 2010, the additional per diem increase shall be \$35.

4. A qualifying hospital's placement into a tier will be determined by the average of its percentage of paid NICU Medicaid days for SFY 2010 dates of service to the total of all qualifying hospitals' paid NICU days for the same time period, and its percentage of NICU patient outlier payments made as of December 31, 2010 for dates of service in SFY 2008 and SFY 2009 and calendar year 2010 to the total NICU outlier payments made to all qualifying hospitals for these same time periods.

a. This average shall be weighted to provide that each hospital's percentage of paid NICU days will comprise 25 percent of this average, while the percentage of outlier payments will comprise 75 percent. In order to qualify for Tiers 1 through 4, a hospital must have received at least .25 percent of outlier payments in SFY 2008, SFY 2009, and calendar year 2010.

b. SFY 2010 is used as the base period to determine the allocation of NICU and PICU outlier payments for hospitals having both NICU and PICU units.

c. If the daily paid outlier amount per paid NICU day for any hospital is greater than the mean plus one standard deviation of the same calculation for all NICU Level III and NICU Level III regional hospitals, then the basis for calculating the hospital's percentage of NICU patient outlier payments shall be to substitute a payment amount equal to the highest daily paid outlier amount of any hospital not exceeding this limit, multiplied by the exceeding hospital's paid NICU days for SFY 2010, to take the place of the hospital's actual paid outlier amount.

NOTE: Children's specialty hospitals are not eligible for the per diem adjustments established in §953.H.3.

5. The department shall evaluate all rates and tiers two years after implementation.

I. Pediatric Intensive Care Unit (PICU)

1. - 2. ...

3. Effective for dates of service on or after March 1, 2011, the per diem rates for Medicaid inpatient services rendered by PICU Level I and PICU Level II units, recognized by the department as such on December 31, 2010, shall be adjusted to include an increase that varies based on the following four tiers:

a. Tier 1. If the qualifying hospital's average percentage exceeds 20 percent, the additional per diem increase shall be \$418.34;

b. Tier 2. If the qualifying hospital's average percentage is less than or equal to 20 percent, but exceeds 10 percent, the additional per diem increase shall be \$278.63;

c. Tier 3. If the qualifying hospital's average percentage is less than or equal to 10 percent, but exceeds 0 percent and the hospital received greater than .25 percent of the outlier payments for dates of service in SFY 2008 and SFY 2009 and calendar year 2010, the additional per diem increase shall be \$178.27; or

d. Tier 4. If the qualifying hospital received less than .25 percent, but greater than 0 percent of the outlier payments for dates of service in SFY 2008, SFY 2009 and calendar year 2010, the additional per diem increase shall be \$35.

4. A qualifying hospital's placement into a tier will be determined by the average of its percentage of paid PICU Medicaid days for SFY 2010 dates of service to the total of all qualifying hospitals' paid PICU days for the same time period, and its percentage of PICU patient outlier payments made as of December 31, 2010 for dates of service in SFY 2008 and SFY 2009 and calendar year 2010 to the total PICU outlier payments made to all qualifying hospitals for these same time periods.

a. This average shall be weighted to provide that each hospital's percentage of paid PICU days will comprise 25 percent of this average, while the percentage of outlier payments will comprise 75 percent. In order to qualify for Tiers 1 through 3, a hospital must have received at least .25 percent of outlier payments in SFY 2008, SFY 2009, and calendar year 2010.

b. SFY 2010 is used as the base period to determine the allocation of NICU and PICU outlier payments for hospitals having both NICU and PICU units.

c. If the daily paid outlier amount per paid PICU day for any hospital is greater than the mean plus one standard deviation of the same calculation for all PICU Level I and PICU Level II hospitals, then the basis for calculating the hospital's percentage of PICU patient outlier payments shall be to substitute a payment amount equal to the highest daily paid outlier amount of any hospital not exceeding this limit, multiplied by the exceeding hospital's paid PICU days for SFY 2010, to take the place of the hospital's actual paid outlier amount.

NOTE: Children's specialty hospitals are not eligible for the per diem adjustments established in §953.I.3.

5. The department shall evaluate all rates and tiers two years after implementation.

J. - O.1. ...

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

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

§954. Outlier Payments

A. - B. ...

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

1. Effective March 1, 2011, in addition to the 6 month timely filing deadline, outlier claims for dates of service on or before February 28, 2011 must be received by the

department on or before May 31, 2011 in order to qualify for payment. Claims for this time period received by the department after May 31, 2011 shall not qualify for payment.

D. Effective for dates of service on or after March 1, 2011, a catastrophic outlier pool shall be established with annual payments limited to \$10,000,000. In order to qualify for payments from this pool, the following conditions must be met:

1. the claims must be for cases for:

a. children less than six years of age who received inpatient services in a disproportionate share hospital setting; or

b. infants less than one year of age who receive inpatient services in any acute care hospital setting; and

2. the costs of the case must exceed \$150,000.

a. The hospital specific cost to charge ratio utilized to calculate the claim costs shall be calculated using the Medicaid NICU or PICU costs and charge data from the most current cost report.

E. The initial outlier pool will cover eligible claims with admission dates from the period beginning March 1, 2011 through June 30, 2011.

1. Payment for the initial partial year pool will be \$3,333,333 and shall be the costs of each hospital's qualifying claims net of claim payments divided by the sum of all qualifying claims costs in excess of payments, multiplied by \$3,333,333.

2. Cases with admission dates on or before February 28, 2011 that continue beyond the March 1, 2011 effective date, and that exceed the \$150,000 cost threshold, shall be eligible for payment in the initial catastrophic outlier pool.

3. Only the costs of the cases applicable to dates of service on or after March 1, 2011 shall be allowable for determination of payment from the pool.

F. Beginning with SFY 2012, the outlier pool will cover eligible claims with admission dates during the state fiscal year (July 1 through June 30) and shall not exceed \$10,000,000 annually. Payment shall be the costs of each hospital's eligible claims less the prospective payment, divided by the sum of all eligible claims costs in excess of payments, multiplied by \$10,000,000.

G. The claim must be submitted no later than six months subsequent to the date that the final claim is paid and no later than September 15 of each year.

H. Qualifying cases for which payments are not finalized by September 1 shall be eligible for inclusion for payment in the subsequent state fiscal year outlier pool.

I. Outliers are not payable for:

1. transplant procedures; or

2. services provided to patients with Medicaid coverage that is secondary to other payer sources.

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 36:519 (March 2010), amended LR 37:

§967. Children's Specialty Hospitals

A. - F. ...

G. Children's specialty hospitals are not eligible for the per diem adjustments established in §953.H.3 and §953.I.3.

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

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

1103#100

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Inpatient Hospital Services—Reimbursement Methodology (LAC 50:V.Chapter 7, 953, 955, 959 and 967)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:V.Chapter 7 and amends §§953,955,959 and 967 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, Office of the Secretary, Bureau of Health Services Financing promulgated a Rule which established the provisions governing a prospective reimbursement methodology for inpatient hospital services (*Louisiana Register*, Volume 20, Number 6). These provisions included the establishment of general and specialized peer group per diem rates, level of care criteria and staffing requirements for certain resource intensive inpatient services and an appeals procedure for adjustment of rate components. The department subsequently established a Medicaid upper payment limit financing mechanism to provide supplemental payments to hospitals for providing healthcare services to low income and needy patients. As a result of a budgetary shortfall in state fiscal year 2010, the department also reduced the reimbursement rates for inpatient hospital services rendered

by non-rural, non-state hospitals (*Louisiana Register*, Volume 36, Number 11).

As a result of a continuing budgetary shortfall in state fiscal year 2011, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for inpatient hospital services to further reduce the reimbursement rates paid to non-rural, non-state hospitals (*Louisiana Register*, Volume 36, Number 8). The August 1, 2010 Emergency Rule also amended the provisions governing the appeals procedure that address the criteria for qualifying loss.

Taking the proposed per diem 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) inpatient 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.

The department promulgated an Emergency Rule which amended the provisions of the August 1, 2010 Emergency Rule to revise the formatting of LAC 50:V.953, §955, §959 and §967 as a result of the promulgation of the November 20, 2010 final Rule governing inpatient hospital services (*Louisiana Register*, Volume 36, Number 11). This Emergency Rule is being promulgated to continue the provisions of the November 20, 2010 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective March 21, 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 hospitals.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 1. Inpatient Hospital Services

Chapter 7. Prospective Reimbursement

Subchapter A. Appeals Procedure

§701. Request for Administrative Review

A. Any hospital seeking an adjustment to its rate, shall submit a written request for administrative review to the Medicaid director (hereafter referred to as director) within 30 days after receipt of the letter notifying the hospital of its rates.

1. The receipt of the letter notifying the hospital of its rates shall be deemed to be 5 days from the date of the letter.

2. The time period for requesting an administrative review may be extended upon written agreement between the department and the hospital.

B. The department will acknowledge receipt of the written request within 30 days after actual receipt. Additional documentation may be requested from the hospital as may be necessary for the director to render a decision. The director shall issue a written decision upon the hospital’s request for a rate adjustment within 90 days after receipt of all additional documentation or information requested.

C. Any hospital seeking an adjustment to its rate, must specify all of the following:

1. the nature of the adjustment sought;
2. the amount of the adjustment sought; and
3. the reasons or factors that the hospital believes justify an adjustment.

D. Any request for an adjustment must include an analysis demonstrating the extent to which the hospital is incurring or expects to incur a qualifying loss in providing covered services to Medicaid and indigent patients.

1. For purposes of these provisions, qualifying loss shall mean that amount by which the hospital's allowable costs (excluding disproportionate share payment adjustments) exceed the Medicaid reimbursement implemented pursuant to these provisions.

2. "Cost" when used in the context of allowable shall mean a hospital's costs incurred in providing covered inpatient services to Medicaid and indigent patients, as calculated in the relevant definitions governing cost reporting.

E. The hospital will not be required to present an analysis of its qualifying loss where the basis for its appeal is limited to a claim that:

1. the rate-setting methodology or criteria for classifying hospitals or hospital claims under the State Plan were incorrectly applied;

2. that incorrect or incomplete data or erroneous calculations were used in establishment of the hospital rates; or

3. the hospital had incurred additional costs because of a catastrophe that meets certain conditions.

F. Except in cases where the basis for the hospital's appeal is limited to a claim that rate-setting methodologies or principles of reimbursement established under the reimbursement plan were incorrectly applied, or that the incorrect or incomplete data or erroneous calculations were in the establishment of the hospital's rate, the department will not award additional reimbursement to a hospital, unless the hospital demonstrates that the reimbursement it receives based on its prospective rate is 70 percent or less of the allowable costs it incurs in providing Medicaid patients care and services that conform to the applicable state and federal laws of quality and safety standards.

1. The department will not increase a provider's rate to more than 105 percent of the peer group rate.

G. In cases where the rate appeal relates to an unresolved dispute between the hospital and its Medicare fiscal intermediary as to any cost reported in the hospital's base year cost report, the director will resolve such disputes for purposes of deciding the request for administrative review.

H. The following matters will not be subject to appeal:

1. the use of peer grouped rates;

2. the use of teaching, non-teaching and bed-size as criteria for hospital peer groups;

3. the use of approved graduate medical education and intern and resident full time equivalents as criteria for major teaching status;

4. the use of fiscal year 1991 medical education costs to establish a hospital-specific medical education component of each teaching hospital's prospective rate;

5. the application of inflationary adjustments contingent on funding appropriated by the legislature;

6. the criteria used to establish the levels of neonatal intensive care;

7. the criteria used to establish the levels of pediatric intensive care;

8. the methodology used to calculate the boarder baby rates for nursery;

9. the use of hospital specific costs for transplant per diem limits;

10. the criteria used to identify specialty hospital peer groups; and

11. the criteria used to establish the level of burn care.

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

J. The department may award additional reimbursement to a hospital that demonstrates by clear and convincing evidence that:

1. A qualifying loss has occurred and the hospitals current prospective rate jeopardized the hospital's long-term financial viability; and

2. the Medicaid population served by the hospital has no reasonable access to other inpatient hospitals for the services that the hospital provides and that the hospital contends are under reimbursed; or

3. Alternatively, demonstrates that its uninsured care hospital costs exceeds 5 percent of its total hospital costs, and a minimum of \$9,000,000 in uninsured care hospital cost in the preceding 12 month time period and the hospital's uninsured care costs has increased at least 35 percent during a consecutive six month time period during the hospital's latest cost reporting period.

a. For purposes of these provisions, an uninsured patient is defined as a patient that is not eligible for Medicare or Medicaid and does not have insurance.

b. For purposes of these provisions, uninsured care costs are defined as uninsured care charges multiplied by the cost to charge ratios by revenue code per the last filed cost report, net of payments received from uninsured patients.

i. The increase in uninsured care costs must be a direct result of a permanent or long term (no less than six months) documented change in services that occurred at a state owned and operated hospital located less than eight miles from the impacted hospital.

ii. For the purpose of this Rule, if a hospital has multiple locations of service, each location shall measure uninsured care costs separately and qualify each location as an individual hospital. Rate adjustments awarded under this provision will be determined by the secretary of the department and shall not exceed 5 percent of the applicable per diem rate.

K. In determining whether to award additional reimbursement to a hospital that has made the showing required, the director shall consider one or more of the following factors and may take any of these actions.

1. The director shall consider whether the hospital has demonstrated that its unreimbursed costs are generated by factors generally not shared by other hospitals in the hospital's peer group. Such factors may include, but are not limited to extraordinary circumstances beyond the control of the hospital and improvements required to comply with licensing or accrediting standards. Where it appears from the evidence presented that the hospital's costs are controllable

through good management practices or cost containment measures or that the hospital has through advertisement to the general public promoted the use of high costs services that could be provided in a more cost effective manner, the director may deny the request for rate adjustment.

2. The director may consider, and may require the hospital to provide financial data, including but not limited to financial ratio data indicative of the hospital's performance quality in particular areas of hospital operation.

3. The director shall consider whether the hospital has taken every reasonable action to contain costs on a hospital-wide basis. In making such a determination, the director may require the hospital to provide audited cost data or other quantitative data including, but not limited to:

- a. occupancy statistics;
- b. average hourly wages paid;
- c. nursing salaries per adjusted patient day;
- d. average length of stay;
- e. cost per ancillary procedure;
- f. average cost per meal served;
- g. average cost per pound of laundry;
- h. average cost per pharmacy prescription;
- i. housekeeping costs per square foot;
- j. medical records costs per admission;
- k. full-time equivalent employees per occupied bed;
- l. age of receivables;
- m. bad debt percentage;
- n. inventory turnover rate; and
- o. information about actions that the hospital has

taken to contain costs.

4. The director may also require that an onsite operational review/audit of the hospital be conducted by the Department or its designee.

L. In awarding relief under this provision, the director shall:

1. Make any necessary adjustments so as to correctly apply the rate-setting methodology, to the hospital submitting the appeal, or to correct calculations, data errors or omissions; or

2. increase one or more of the hospital's rates by an amount that can reasonably be expected to ensure continuing access to sufficient inpatient hospital services of adequate quality for Medicaid patients served by the hospital.

M. The following decisions by the director shall not result in any change in the peer group rates:

1. the decision to:
 - a. recognize omitted, additional or increased costs incurred by any hospital;
 - b. adjust the hospital rates; or
 - c. otherwise award additional reimbursement to any hospital.

N. Hospitals that qualify under this provision must document their continuing eligibility at the beginning of each subsequent state fiscal year. Rate adjustments granted under this provision shall be effective from the first day of the rate period to which the hospital's appeal relates. However, no retroactive adjustments will be made to the rate or rates that were paid during any prior rate period.

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:

§703. Administrative Appeal and Judicial Review

A. If the director's decision is adverse to the hospital, the hospital may appeal the director's decision to the Bureau of Appeals or its successor. The appeal must be lodged within 30 days of receipt of the written decision of the director. The receipt of the decision of the director shall be deemed to be five days from the date of the decision. The administrative appeal shall be conducted in accordance with the Louisiana Administrative Procedure Act (APA). The Bureau of Appeals shall submit a recommended decision to the secretary of the department. The secretary will issue the final decision of the department.

B. Judicial review of the secretary's decision shall be in accordance with the APA and shall be filed in the nineteenth Judicial District Court.

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 9. Non-Rural, Non-State Hospitals

Subchapter B. Reimbursement Methodology

§953. Acute Care Hospitals

A. - O.1. ...

P. Effective for dates of service on or after August 1, 2010, the inpatient per diem rate paid to acute care hospitals shall be reduced by 4.6 percent of the per diem rate on file as of July 31, 2010.

1. Payments to small rural hospitals as defined in R.S. 40:1300 shall be exempt from this 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 34:876 (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 37:

§955. Long Term Hospitals

A. - F. ...

G. Effective for dates of service on or after August 1, 2010, the inpatient per diem rate paid to long term hospitals shall be reduced by 4.6 percent of the per diem rate on file as of July 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: 34:876 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895 (September 2009), amended LR 36:1554 (July 2010), LR 37:

§959. Inpatient Psychiatric Hospital Services

A. - H. ...

I. Effective for dates of service on or after August 1, 2010, the prospective per diem rate paid to non-rural, non-state free-standing psychiatric hospitals and distinct part psychiatric units within non-rural, non-state acute care hospitals shall be reduced by 4.6 percent of the per diem rate on file as of July 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 34:876 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services

Financing, LR 35:1895 (September 2009), amended LR 36:1554 (July 2010), LR 37:

§967. Children's Specialty Hospitals

A. - F. ...

G. Effective for dates of service on or after August 1, 2010, the per diem rates as calculated per §967.A.-C above shall be reduced by 4.6 percent. Final payment shall be the lesser of 90.63 percent of allowable inpatient acute care and psychiatric costs as determined by the cost report or the Medicaid discharges or days as specified per §967.A.-C for the period, multiplied by 90.63 percent of the target rate per discharge or per diem limitation as specified per §967.A.-C for the period.

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, 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

1103#088

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

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

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

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

Act 883 of the 2010 Regular Session of the Louisiana Legislature directed the department to implement a payment methodology to optimize Medicaid payments to rural hospitals for inpatient and outpatient services. In compliance with the directives of Act 883, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for small rural

hospitals to reimburse inpatient hospital services up to the Medicare inpatient upper payment limits (*Louisiana Register*, Volume 36, Number 8). This Emergency Rule is being promulgated to continue the provisions of the August 1, 2010 Emergency Rule. This Emergency Rule is being promulgated to promote the health and welfare of Medicaid recipients by ensuring sufficient provider participation and recipient access to services.

Effective March 31, 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 small rural hospitals.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 1. Inpatient Hospital Services

Chapter 11. Rural, Non-State Hospitals

Subchapter B. Reimbursement Methodology

§1125. Small Rural Hospitals

A. - C. ...

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

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

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

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

1103#089

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

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

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

As a result of the allocation of additional funds by the legislature during the 2009 Regular Session of the Louisiana Legislature, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for non-state intermediate care facilities for persons with developmental disabilities (ICFs/DD) to increase the per diem rates (*Louisiana Register*, Volume 36, Number 7). As a result of a budgetary shortfall in state fiscal year 2011, the department determined that it was necessary to amend the provisions governing the reimbursement methodology for non-state ICFs/DD to reduce the per diem rates (*Louisiana Register*, Volume 36, Number 8).

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

Effective March 31, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for non-state intermediate care facilities for persons with developmental disabilities.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part VII. Long Term Care

Subpart 3. Intermediate Care Facilities for Persons with Developmental Disabilities

Chapter 329. Reimbursement Methodology

Subchapter A. Non-State Facilities

§32903. Rate Determination

A. - J. ...

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

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

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

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

1103#090

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Intermediate Care Facilities for Persons with
Developmental Disabilities
Public Facilities—Reimbursement Methodology
(LAC 50:VII.32965-32969)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:VII.32965-32969 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 amended the provisions governing the reimbursement methodology for state-operated intermediate care facilities for persons with developmental disabilities (ICFs/DD) and established payments using a formula that established per diem rates at the Medicare upper payment limit for these services (*Louisiana Register*, Volume 29, Number 11). Upon submission of the corresponding State Plan amendment to the Centers for Medicare and Medicaid Services for review and approval, the department determined that it was also necessary to establish provisions in the Medicaid State Plan governing the reimbursement methodology for quasi-public ICFs/DD. The department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for public ICFs/DD to establish a transitional Medicaid reimbursement rate for community homes that are being privatized (*Louisiana Register*, Volume 36, Number 8). This Emergency Rule also adopted all of the provisions governing reimbursements to state-owned and operated

facilities and quasi-public facilities in a codified format for inclusion in the *Louisiana Administrative Code*. This Emergency Rule is being promulgated to continue the provisions of the August 1, 2010 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective March 31, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for public intermediate care facilities for persons with developmental disabilities.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part VII. Long Term Care

Subpart 3. Intermediate Care Facilities for Persons with Developmental Disabilities

Chapter 329. Reimbursement Methodology

Subchapter C. Public Facilities

§32965. State-Owned and Operated Facilities

A. Medicaid payments to state-owned and operated intermediate care facilities for persons with developmental disabilities are based on the Medicare formula for determining the routine service cost limits as follows:

1. calculate each state-owned and operated ICF/DD's per diem routine costs in a base year;
2. calculate 112 percent of the average per diem routine costs; and
3. inflate 112 percent of the per diem routine costs using the skilled nursing facility (SNF) market basket index of inflation.

B. Each state-owned and operated facility's capital and ancillary costs will be paid by Medicaid on a "pass-through" basis.

C. The sum of the calculations for routine service costs and the capital and ancillary costs "pass-through" shall be the per diem rate for each state-owned and operated ICF/DD. The base year cost reports to be used for the initial calculations shall be the cost reports for the fiscal year ended June 30, 2002.

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:

§32967. Quasi-Public Facilities

A. Medicaid payment to quasi-public facilities is a facility-specific prospective rate based on budgeted costs. Providers shall be required to submit a projected budget for the state fiscal year beginning July 1.

B. The payment rates for quasi-public facilities shall be determined as follows:

1. determine each ICF/DD's per diem for the base year beginning July 1;
2. calculate the inflation factor using an average CPI index applied to each facility's per diem for the base year to determine the inflated per diem;
3. calculate the median per diem for the facilities' base year;
4. calculate the facility's routine cost per diem for the SFY beginning July 1 by using the lowest of the budgeted, inflated or median per diem rates plus any additional allowances; and
5. calculate the final approved per diem rate for each facility by adding routine costs plus any "pass through"

amounts for ancillary services, provider fees, and grant expenses.

C. Providers may request a final rate adjustment subject to submission of supportive documentation and approval by the department.

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

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

§32969. Transitional Rates for Public Facilities

A. Effective August 1, 2010, the department shall establish a transitional Medicaid reimbursement rate of \$302.08 per day per individual for a public ICF/DD community home that is transitioning to a private facility, provided that the community home meets the following criteria. The community home:

1. shall have a fully executed Cooperative Endeavor Agreement (CEA) with the Office for Citizens with Developmental Disabilities for the private operation of the facility;

2. shall have a high concentration of medically fragile individuals being served, as determined by the department; and

- a. For purposes of these provisions, a medically fragile individual shall refer to an individual who has a medically complex condition characterized by multiple, significant medical problems that require extended care.

3. incurs or will incur higher existing costs not currently captured in the private ICF/DD rate methodology.

B. The transitional Medicaid reimbursement rate shall only be for the period of transition, which is defined as the term of the CEA or a period of three years, whichever is shorter.

C. The transitional Medicaid reimbursement rate is all-inclusive and incorporates the following cost components:

1. direct care staffing;
2. medical/nursing staff, up to 23 hours per day;
3. medical supplies;
4. transportation;
5. administrative; and
6. the provider fee.

D. If the community home meets the criteria in §32969.C and the individuals served require that the community home has a licensed nurse at the facility 24 hours per day, seven days per week, the community home may apply for a supplement to the transitional rate. The supplement to the rate shall not exceed \$25.33 per day per individual.

E. The total transitional Medicaid reimbursement rate, including the supplement, shall not exceed \$327.41 per day per individual.

F. The transitional rate and supplement shall not be subject to the following:

1. inflationary factors or adjustments;
2. rebasing;
3. budgetary reductions; or
4. other rate adjustments.

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

1103#091

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 4333-4337)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XIX.4329 and §§4334-4337 and repeals LAC 50:XIX.4333 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 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 further reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 8). In addition, the provisions contained in this Chapter governing the reimbursement for outpatient hospital laboratory services were repealed 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). This Emergency Rule is being promulgated to continue the provisions of the November 20, 2010 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effect March 21, 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.

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 37:

§4333. Outpatient Hospital Laboratory Services Reimbursement

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 Service Financing (for inclusion in the LAC) LR 28:1026 (May 2002), amended LR 29:1096 (July 2003), repealed 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.

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 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.

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 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.

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 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

1103#092

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 2010, the Department of health and Hospitals, Bureau 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 further reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 8). The department promulgated an Emergency Rule which amended the provisions of the August 1, 2010 Emergency Rule 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). This Emergency Rule is being promulgated to continue the provisions of the November 20, 2010 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective March 21, 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.

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

1103#093

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Mental Health Rehabilitation Program Termination of Parent/Family Intervention (Intensive) Services and Continued Treatment Clarifications (LAC 50:XV.335, 501-505 and 901)

The Department of Health and Hospitals, Bureau of Health Services Financing repeals LAC 50:XV.335 and amends 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 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 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, 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 who currently receive 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). This Emergency Rule is being promulgated to continue the provisions of the November 20, 2010 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective March 21, 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

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 36:

§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.

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 36:2565 (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

1103#094

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 multi-systemic therapy services to further reduce the reimbursement rates (*Louisiana Register*; Volume 36, Number 8). 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.25701 as a result of the promulgation of the November 20, 2010 final Rule governing MST services (*Louisiana Register*; Volume 36, Number 11). This Emergency Rule is being promulgated to continue the provisions of the November 20, 2010 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective March 21, 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.

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 36:2566 (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

1103#095

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.5109, 5313, 5317, 5513,
5517, 5713, 5719, 6115 and 6119)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:V.5109 and amends §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.

The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which revised the reimbursement methodology for outpatient services rendered by children’s specialty hospitals

(*Louisiana Register*, Volume 35, Number 9). In January 2010, the department established a Medicaid upper payment limit financing mechanism to provide supplemental payments to hospitals for providing healthcare services to low income and needy patients (*Louisiana Register*, Volume 36, Number 1). As a result of a budgetary shortfall in state fiscal year 2010, the department amended 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). This Rule also incorporated the provisions of the September 1, 2009 Emergency Rule, with the exception of §5109, and the January 1, 2010 Emergency Rule.

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 outpatient hospital services to further reduce the reimbursement rates paid to non-rural, non-state hospitals and children’s specialty hospitals (*Louisiana Register*, Volume 36, Number 8). The department promulgated an Emergency Rule which amended the provisions of the August 1, 2010 Emergency Rule to incorporate the provisions in §5109 of the September 1, 2009 Emergency Rule and 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). This Emergency Rule is being promulgated to continue the provisions of the November 20, 2010 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance program.

Taking the proposed 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.

Effective March 21, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing outpatient hospital services rendered by non-rural, non-state hospitals and children’s specialty hospitals.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospitals

Subpart 5. Outpatient Hospitals

Chapter 51. General Provisions

§5109. Children’s Specialty Hospitals

A. In order to receive Medicaid reimbursement for outpatient services as a children’s specialty hospital, the acute care hospital must meet the following criteria:

1. be recognized by Medicare as a prospective payment system (PPS) exempt children’s specialty hospital;
2. does not qualify for Medicare disproportionate share hospital payments; and
3. have a Medicaid inpatient days utilization rate greater than the mean plus two standard deviations of the Medicaid utilization rates for all hospitals in the state receiving Medicaid payments.

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 53. Outpatient Surgery

Subchapter B. Reimbursement Methodology

§5313. Non-Rural, Non-State Hospitals

A. - D. ...

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.

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 the 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.

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.

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.

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.

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.

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.

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

1103#096

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Outpatient Hospital Services
Small Rural Hospitals—Upper Payment Limit
(LAC 50:V.5311, 5511, 5711, 5911, and 6113)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.5311, §§5511, 5711, 5911, and 6113 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

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

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

Effective March 31, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the

provisions governing the reimbursement methodology for outpatient hospital services rendered by small rural hospitals.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospitals

Subpart 5. Outpatient Hospitals

Chapter 53. Outpatient Surgery

Subchapter B. Reimbursement Methodology

§5311. Small Rural Hospitals

A. - A.2.a. ...

B. Effective for dates of service on or after August 1, 2010, small rural hospitals shall be reimbursed for outpatient hospital surgery services up to the Medicare outpatient upper payment limits.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:956 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 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.

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.

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.

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:

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

1103#097

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing
and
Office of Aging and Adult Services

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 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 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 and the Office of Aging and Adult Services amended the provisions governing the reimbursement methodology for long-term personal care services (LT-PCS) 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 further reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 8). This Emergency Rule is being promulgated to continue the provisions of the August 21, 2010 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective March 31, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amend the provisions governing the reimbursement methodology for long-term personal care services to reduce the reimbursement rates.

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.

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:

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

1103#098

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 further reduce the reimbursement rates for services rendered to Medicaid eligible pregnant women (*Louisiana Register*, Volume 36, Number 8). 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.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). This Emergency Rule is being promulgated to continue the provisions of the November 20, 2010 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective March 21, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the August 1, 2010 Emergency Rule governing the reimbursement methodology for dental services rendered to Medicaid eligible pregnant women to reduce the reimbursement rates.

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.

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

1103#099

Rules

RULE

Department of Agriculture and Forestry Feed, Fertilizer, and Agriculture Commission

Definition of Small Package (LAC 7:XI.101)

In accordance with the Administrative Procedures Act, R.S. 49:950 et seq., and with the enabling statute, R.S. 3:1312, the Department of Agriculture and Forestry, Feed, Fertilizer, and Agricultural Liming Commission is amending these rules and regulations to bring the definition of small packages in line with current fertilizer manufacturing and marketing practices.

Title 7 AGRICULTURE AND ANIMALS Part XI. Fertilizers

Chapter 1. Sale of Fertilizers

§101. Definitions

* * *

Small Packages—less than 5 gallons of liquid fertilizer and less than 50 pounds of dry material.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1312.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Fertilizer Commission, LR 7:164 (April 1981), amended LR 12:493 (August 1986), amended by the Feed, Fertilizer, and Agricultural Liming Commission, LR 37:809 (March 2011).

Mike Strain, DVM
Commissioner

1103#017

RULE

Department of Agriculture and Forestry Office of Agriculture and Environmental Sciences

Agriculture Chemistry Lab Fees (LAC 7:I.103)

In accordance with the Administrative Procedures Act, R.S. 49:950 et seq., and with the enabling statute, R.S. 3:16, the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences is amending these rules and regulations to substitute the Louisiana Agricultural Chemistry Laboratory for the Department of Agriculture and Forestry as the payee for agricultural chemistry laboratory fees.

Title 7 AGRICULTURE AND ANIMALS Part I. Administration

Chapter 1. Administrative Procedures

§103. Agriculture Chemistry Lab Fees

A. - A.1. ...

B. The laboratory fees shall be paid by the party requesting analysis and shall be payable to the Louisiana Agricultural Chemistry Laboratory.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:16.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 15:77 (February 1989), amended 37:809 (March 2011).

Mike Strain, DVM
Commissioner

1103#016

RULE

Department of Agriculture and Forestry Office of Agricultural and Environmental Sciences

Giant Salvinia (LAC 7:XXIII.143)

In accordance with the Administrative Procedure Act, (R.S. 49:950 et seq.), and under the authority of R.S. 3:3203, the Department of Agriculture and Forestry has amended these rules and regulations for the implementation of a herbicide application program by the Sabine River Authority, State of Louisiana (SRA) to manage the noxious aquatic weed Giant Salvinia in the Toledo Bend Reservoir (Toledo Bend). The SRA's herbicide application program will allow Louisiana property owners whose property adjoins Toledo Bend to apply certain herbicides to control Giant Salvinia in, on and around their property.

The SRA, the Louisiana Department of Wildlife and Fisheries, (LDWF), the LSU Agricultural Center (Ag Center), the Toledo Bend Residents Association, and Bass Unlimited have requested the adoption of these rules to allow for the spraying and controlling Giant Salvinia at Toledo Bend. Giant Salvinia was first discovered on Toledo Bend in 1998 and has proliferated to the point that it threatens the native plants and animals that live in the lake, the biodiversity of that aquatic life, the continued commercial and recreational use of the lake and the productivity and usefulness of the lake itself. The Rule will provide an effective program for controlling Giant Salvinia at Toledo Bend.

Title 7 AGRICULTURE AND ANIMALS Part XXIII. Pesticides

Chapter 1. Advisory Commission on Pesticides Subchapter I. Regulations Governing Application of Pesticides

§143. Restrictions on Application of Certain Pesticides

A. - L.2. ...

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

RULE

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

**Child Support Enforcement—Securing and
Enforcing Medical Support Obligation
(LAC 67:III.2527)**

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

a. Complete the SRA designated Giant Salvinia applicator training program.

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

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

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

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

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

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

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

N. - P.I.c. ...

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

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

Mike Strain, DVM
Commissioner

1103#018

In accordance with the provisions of R.S. 49:950 et seq., the Administrative Procedure Act, the Department of Children and Family Services, Division of Programs, Child Support Enforcement Section, has amended the Louisiana Administrative Code (LAC), Title 67, Part III, Subpart 4, Support Enforcement Services, Chapter 25, Subchapter H, Section 2527, Securing and Enforcing Medical Support Obligation, pursuant to Act 299 of the 2010 Regular Session of the Louisiana Legislature.

Act 299 of the 2010 Regular Session of the Louisiana Legislature provides for medical support for minor children subject to child support orders, provides for definitions, and for related matters. In accordance with Act 299, the department has amended Section 2527 to clarify matters relative to providing medical support for minor children subject to child support orders.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 4. Support Enforcement Services

Chapter 25. Support Enforcement

Subchapter H. Medical Support Activities

**§2527. Securing and Enforcing Medical Support
Obligation**

A. Child Support Enforcement (CSE) shall secure medical support information and enforce medical support through the use of the national medical support notice.

B. Unless the custodial parent and child(ren) have satisfactory health insurance other than Medicaid, IV-D shall petition the court to include health insurance that is available to either or both parent(s) at reasonable cost in new or modified orders for support. Reasonable cost, as it pertains to private health insurance, means that the health insurance premiums for the minor child or children do not exceed 5 percent of the gross income of the parent ordered to provide support pursuant to R.S. 9:315.4. A medical support order shall be obtained whether or not health insurance is actually available to either or both parent(s) at the time the order is entered, or modification of current coverage to include the child(ren) in question is immediately possible.

C. The IV-D agency will take steps to enforce the medical support order if health insurance is available to either or both parent(s) at reasonable cost but has not been secured at the time the order is issued.

D. CSE may enforce court-ordered medical support by means of income assignment in cases where the court has ordered cash medical support.

E. CSE shall require the employer of a parent who is court-ordered to provide medical support to enroll and maintain available health insurance on a child.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR 303.31 and 303.32, R.S. 46:236.1.1, 46:236.1.2, 46:236.3, Ch.C. Art.1305.1 et seq., 46:236.8.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 12:245 (April 1986) amended by the Department of Social Services, Office of Family Support, LR 22:118 (February 1996), LR 31:1102 (May 2005), amended by Department of Children and Family Services, Division of Programs, LR 37:810 (March 2011).

Ruth Johnson
Secretary

1103#060

RULE

Department of Children and Family Services Division of Programs

Portability of Criminal History, Religious
Exemption, and Sex Offenders
(LAC 67:III.Chapter 73)

In accordance with provisions of the Administrative Procedure Act R.S. 49:950 et seq., the Department of Children and Family Services, Division of Programs, Licensing Section has amended the Louisiana Administrative Code (LAC) Title 67, Part III, Sections 7302, 7303, 7305, 7311, 7357, 7359, 7361 and 7365, Child Care Licensing, to comply with Acts 429, 508 and 569 of the 2010 Regular Session of the Louisiana Legislature and Act 210 of the 2009 Regular Session of the Louisiana Legislature.

Pursuant to Act 508 of the 2010 Legislative Session, the Department of Children and Family Services finds it necessary to allow for the portability of criminal history information. This Rule will allow an individual applying for a position of supervisory or disciplinary authority over children in a child care facility, or an independent contractor who performs work in a child care facility, to receive a certified copy of his/her criminal history information upon written request to the Bureau of Criminal Identification and Information Section of the Louisiana State Police. The certified copy of the criminal background check may be accepted by a prospective employer and shall be deemed to satisfy the requirements of R.S. 15:587.1 for each facility requesting criminal history information for a period of one year from the date of issuance of the certified copy.

In accordance with Acts 429 and 569 of the 2010 Legislative Session a recognized religious organization which is qualified as a tax-exempt organization under Section 501(c) of the Internal Revenue Code, which remains open for not more than 24 hours in a continuous 7-day week, and in which no individual child remains for more than 24 hours in one continuous stay shall not be considered a "day care center" for the purposes of this Chapter. In addition, there shall be a moratorium on the enforcement of any rule and regulation by the Department of Children and Family Services upon a child care facility, operated by a religious, nonprofit organization which is exempt from federal income taxes pursuant to 26 U.S.C. 501(c)(3), and which was not

licensed as either a Class "A" or Class "B" facility on June 1, 2010, and provides childcare for not less than 25 hours and not more than 40 hours in a continuous 7-day week. This moratorium shall terminate and cease to be effective upon July 1, 2011.

Pursuant to Act 210 of the 2009 Legislative Session, any person that has been convicted of a sex offense as defined in R.S. 15:541, is prohibited from owning, operating, or in any way participating in the governance of a child day care facility. The department also prohibits any employer from knowingly employing a person convicted of a sex offense as defined in R.S. 15:541, to work in a day care center or a child day care facility. This Rule shall also require any owner/owners of a child day care facility to provide documentation of a satisfactory criminal record check, as required by R.S. 15:587.1.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 21. Child Care Licensing

Chapter 73. Day Care Centers

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

§7302. Authority

A. Legislative Provisions

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

2. In accordance with Act 429 and Act 569 of the 2010 Legislative Session, a recognized religious organization which is qualified as a tax-exempt organization under section 501(c) of the Internal Revenue Code, which remains open for not more than 24 hours in a continuous 7-day week, and in which no individual child remains for more than 24 hours in one continuous stay shall not be considered a "day care center" for the purposes of this Chapter. In addition, there shall be a moratorium on the enforcement of any rule and regulation by the Department of Children and Family Services upon a child care facility, operated by a religious, nonprofit organization which is exempt from federal income taxes pursuant to 26 U.S.C. 501(c)(3), and which was not licensed as either a Class A or Class B facility on June 1, 2010, and provides childcare for not less than 25 hours and not more than 40 hours in a continuous 7-day week. This moratorium shall terminate and cease to be effective upon July 1, 2011.

B. - F.6. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:1107 (July 2003), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2755 (December 2007), amended LR 36:332 (February 2010), LR 36:847 (April 2010), amended by the Department of Children and Family Services, Division of Programs, LR 37:811 (March 2011).

§7303. Procedures

A. - A.2.g.viii. ...

ix. three current, positive, signed references on director designee (if applicable);

x. licensure survey verifying compliance with all minimum standards;

xi. documentation of a satisfactory criminal record clearance for all staff including all owners and operators; and

xii. documentation of completed state central registry disclosure forms noting no justified (valid) finding of abuse and/or neglect for all staff or documentation from the Risk Assessment Panel or Division of Administrative Law noting that the individual does not pose a risk to children.

3. - 4.h. ...

i. three current, positive, signed references on director designee (if applicable);

j. copy of bill of sale;

k. documentation of a satisfactory criminal record clearance for all owners and operators and all staff not employed by the previous owner; and

l. documentation of completed state central registry disclosure forms noting no justified (valid) finding of abuse and/or neglect for all staff or documentation from the Risk Assessment Panel or Division of Administrative Law noting that the individual does not pose a risk to children.

NOTE: If the above information is not received prior to the sale or day of the sale, the new owner must not operate until a license is issued. When the application is received, it will be treated as an initial application rather than a change of ownership.

A.5. - C.3. ...

4. The bureau shall be notified prior to making changes which may have an effect upon the license, e.g., age range of children served, usage of indoor and outdoor space, director, hours/months/days of operation, transportation, etc.

D. Denial, Revocation or Non-Renewal of License. An application for a license may be denied, or a license may be revoked, or renewal denied, for any of the following reasons:

1. - 14. ...

15. presence or use of any recalled product by the provider that is listed in the newsletters issued by the Office of the Attorney General;

16. failure to attend any mandatory training session offered by the bureau;

17. presence of an individual with a justified (valid) finding of child/abuse neglect not being directly supervised by another paid employee of the facility, who has not disclosed that their name appears with a justified (valid) finding on the state central registry until a determination by the Risk Evaluation Panel or Division of Administrative Law that the individual does not pose a risk to children;

18. presence of an individual on the child care premises with a ruling by the Risk Evaluation Panel that the individual poses a risk to children and the individual has not requested an appeal hearing by the Division of Administrative Law within the required time frame;

19. presence of an individual on the child care premises with a ruling by the Division of Administrative Law that the individual poses a risk to children; or

20. having knowledge that a convicted sex offender is physically present within 1000 feet of the child care facility and failing to notify law enforcement and licensing management staff immediately upon receipt of such knowledge.

E. - H.4. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:1108 (July 2003), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2756 (December 2007), amended LR 36:333 (February 2010), LR 36:832 (April 2010), repromulgated LR 36:1272 (June 2010), amended LR 36:1279 (June 2010), amended by the Department of Children and Family Services, Division of Programs, LR 37:812 (March 2011).

§7305. General Requirements

A. - M. ...

N. Conditions for Participation in a Child-related Business

1. Any owner/owners of a child day care facility shall provide documentation of a satisfactory criminal record check, as required by R.S. 46:51.2 and R.S. 15:587.1. A criminal background check shall be required of each owner of a facility submitting a new application, change of ownership application, change of location application, and/or application for renewal for a child day care license. No person with a criminal conviction of a felony, a plea of guilty or nolo contendere of a felony, or plea of guilty or nolo contendere to any offense included in R.S. 15:587.1, R.S. 14:2, R.S. 15:541 or any offense involving a juvenile victim, shall directly or indirectly own, operate or participate in the governance of a child care facility.

2. New members/owners added to a partnership, church, corporation, limited liability corporation or governmental entity which does not constitute a change of ownership shall provide documentation of a satisfactory criminal record check as required by R.S. 46:51.2 and R.S. 15:587.1. No member/owner with a criminal conviction of conviction of a felony, a plea of guilty or nolo contendere of a felony, or plea of guilty or nolo contendere to any offense included in R.S. 15:587.1, R.S. 14:2, R.S. 15:541 or any offense involving a juvenile victim, shall directly or indirectly own, operate or participate in the governance of a child care facility.

3. Every owner shall submit the criminal background check showing that he or she has not been convicted of any offense enumerated in R.S. 15:587.1 or a felony, or plea of guilty or nolo contendere to any offense included in R.S. 15:587.1, R.S. 14:2, R.S. 15:541 or any offense involving a juvenile victim, together with the initial application or, in the case of an existing center, with the application for renewal of

the license. If the criminal background check shows that any owner has been convicted of any enumerated offense under R.S. 15:587.1 or a felony, a plea of guilty or nolo contendere of a felony, or any offense involving a juvenile victim, the owner or director shall submit the information to the licensing section management staff within 24 hours or no later than the next business day, whichever is sooner, upon receipt of the result.

4. The physical presence of a sex offender in, on, or within 1,000 feet of a child day care facility is prohibited. Providers and child care staff shall not permit an individual convicted of a sex offense, as defined in R.S. 15:541, physical access to a child day care facility, as defined in R.S. 46:1403.

5. The owner or director of a child day care facility shall be required to call and notify law enforcement agencies and the licensing section management staff if a sex offender is on the premises of the child day care facility or within 1,000 feet of the child day care facility. The licensing office shall be contacted immediately. The verbal report shall be followed by a written report.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:1112 (July 2003), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2759 (December 2007), amended LR 36:333 (February 2010), amended by the Department of Children and Family Services, Division of Programs, LR 37:812 (March 2011).

§7311. Personnel Records

A. - A.4. ...

5. documentation of a satisfactory criminal record check from Louisiana State Police as required by R.S. 46:51.2. This check shall be obtained prior to the individual being present in the child care facility. No person who has been convicted of, or pled guilty or nolo contendere to any offense included in R.S. 15:587.1, R.S. 14:2, R.S. 15:541 or any offense involving a juvenile victim, shall be eligible to own, operate, and/or be present in any capacity in any licensed child care facility. For any owner or operator, a clear criminal background check in accordance with R.S. 46:51.2 shall be obtained prior to the issuance of a license or approval of a change of ownership. In addition, neither an owner, nor a director, nor a director designee shall have a conviction of, or pled guilty or nolo contendere to any crime in which an act of fraud or intent to defraud is an element of the offense.

a. An individual who applies for a position of supervisory or disciplinary authority over children in a child care facility may provide a certified copy of their criminal background check obtained from the Louisiana Bureau of Criminal Identification and Information Section of the Louisiana State Police. If an individual provides a certified copy of their criminal background check obtained from the Louisiana State Police to the provider, this criminal background check shall be accepted by the department for a period of one year from the date of issuance of the certified copy. A photocopy of the certified copy shall be kept on file at the facility in which the individual is currently employed.

However, prior to the one year date of issuance of the certified criminal background check, the provider shall request and obtain a satisfactory criminal check from Louisiana State Police in order for the individual to continue employment at the center. If the clearance is not obtained by the provider prior to the one year date of issuance of the certified criminal background check, the staff person is no longer allowed on the child care premises until a clearance is received.

B. The following information shall be kept on file for independent contractors including therapeutic professionals and extracurricular personnel, e.g. computer instructors, dance instructors, librarians, tumble bus personnel, speech therapists, licensed health care professionals, state-certified teachers employed through a local school board, art instructors, and other outside contractors:

1. documentation of a satisfactory criminal record check from Louisiana State Police as required by R.S. 46:51.2. This check shall be obtained prior to the individual being present in the child care facility. No person who has been convicted of, or pled guilty or nolo contendere to any offense included in R.S. 15:587.1, R.S.14:2, R.S.15:541 or any offense involving a juvenile victim, shall be present in any capacity in any child care facility;

a. independent contractors, therapeutic professionals, and/or extracurricular personnel may provide a certified copy of their criminal background check obtained from the Bureau of Criminal Identification and Information Section of the Louisiana State Police to the provider prior to being present and working with a child or children at the facility. If an individual provides a certified copy of their criminal background check obtained from the Louisiana State Police to the provider, this criminal background check shall be accepted by the department for a period of one year from the date of issuance of the certified copy. A photocopy of the certified copy shall be kept on file at the facility. Prior to the one year date of issuance of the certified copy, the individual shall request and obtain a current certified copy of their criminal background check obtained from the Louisiana Bureau of Criminal Identification and Information Section of the Louisiana State Police in order to continue providing services to a child or children at the child care facility. If the clearance is not obtained by the provider prior to the one year date of issuance of the certified criminal background check, the individual shall no longer be allowed on the child care premises until a clearance is received. This criminal background check shall be accepted by the department for a period of one year from the date of issuance of the certified copy. A photocopy of the certified copy shall be kept on file at the facility;

B.2. - C.3.d. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:1114 (July 2003), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2762 (December 2007), amended by the Department of Children and Family Services, Division of Programs, LR 37:813 (March 2011).

Subpart 21. Child Care Licensing
Chapter 73. Day Care Centers
Subchapter B. Licensing Class “B” Regulations for
Child Care Centers

§7357. Definitions

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

* * *

Child Day Care Center—a child day care facility as defined in R.S. 46:1403, including vehicles or other structures owned or operated by the provider where care and supervision of children are provided, or where some process or operation integral to providing or facilitating care or supervision is conducted.

* * *

Extra-Curricular Professionals—individuals who are not employees of the center, but who come to the center to provide therapy, services, or enrichment activities for an individual child or group of children. Examples: computer instructor, dance instructor, librarian, tumble bus personnel, therapeutic personnel (occupational therapist, physical therapist, speech therapist), nutritionist, early interventionist, and nurse.

* * *

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, LR 18:970 (September 1992), LR 26:1636 (August 2000), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2770 (December 2007), amended LR 36:334 (February 2010), LR 36:850 (April 2010), amended by the Department of Children and Family Services, Division of Programs, LR 37:814 (March 2011).

§7359. Procedures

A. - A.2.f.v. ...

vi. licensure survey verifying compliance with all minimum standards;

vii. documentation of a satisfactory criminal record clearance for all staff including all owners and operators;

viii. documentation of completed state central registry disclosure forms noting no justified (valid) finding of abuse and/or neglect for all staff or documentation from the Risk Assessment Panel or Division of Administrative Law noting that the individual does not pose a risk to children.

3. - 4. ...

a. documentation of a satisfactory criminal record clearance for all owners and operators and all staff not employed by the previous owner; and

b. documentation of completed state central registry disclosure forms noting no justified (valid) finding of abuse and/or neglect for all staff or documentation from the Risk Assessment Panel or Division of Administrative Law noting that the individual does not pose a risk to children.

A.5. - F.10. ...

11. presence of an individual with a justified (valid) finding of child/abuse neglect not being directly supervised by another paid employee of the facility, who has not disclosed that their name appears with a justified (valid) finding on the state central registry until a determination by

the Risk Evaluation Panel or Division of Administrative Law that the individual does not pose a risk to children;

12. presence of an individual on the child care premises with a ruling by the Risk Evaluation Panel that the individual poses a risk to children and the individual has not requested an appeal hearing by the Division of Administrative Law within the required time frame;

13. presence of an individual on the child care premises with a ruling by the Division of Administrative Law that the individual poses a risk to children;

14. having knowledge that a convicted sex offender is physically present within 1000 feet of the child care facility and failing to notify law enforcement and licensing management staff immediately upon receipt of such knowledge.

G. - J.4. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, LR 18:970 (September 1992), LR 26:1636 (August 2000), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2771 (December 2007), amended by the Department of Social Services, Office of Family Support LR 36:832 (April 2010), LR 36:1272 (June 2010), LR 36:1279 (June 2010), amended by the Department of Children and Family Services, Division of Programs, LR 37:814 (March 2011).

§7361. General Requirements

A. - L. ...

M. Conditions for Participation in a Child-Related Business

1. Any owner/owners of a child day care facility shall provide documentation of a satisfactory criminal record check, as required by R.S. 46:51.2 and R.S. 15:587.1. A criminal background check shall be required of each owner of a facility submitting a new application, change of ownership application, change of location application, and/or application for renewal for a child day care license. No person with a criminal conviction of a felony, a plea of guilty or nolo contendere of a felony, or plea of guilty or nolo contendere to any offense included in R.S. 15:587.1, R.S. 14:2, R.S. 15:541 or any offense involving a juvenile victim, shall directly or indirectly own, operate or participate in the governance of a child care facility.

2. New members/owners added to a partnership, church, corporation, limited liability corporation or governmental entity which does not constitute a change of ownership shall provide documentation of a satisfactory criminal record check as required by R.S. 46:51.2 and R.S. 15:587.1. No member/owner with a criminal conviction of conviction of a felony, a plea of guilty or nolo contendere of a felony, or plea of guilty or nolo contendere to any offense included in R.S. 15:587.1, R.S. 14:2, R.S. 15:541 or any offense involving a juvenile victim, shall directly or indirectly own, operate or participate in the governance of a child care facility.

3. Every owner shall submit the criminal background check showing that he or she has not been convicted of any offense enumerated in R.S. 15:587.1 or a felony, or plea of guilty or nolo contendere to any offense included in R.S. 15:587.1, R.S. 14:2, R.S. 15:541 or any offense involving a juvenile victim, together with the initial application or, in the

case of an existing center, with the application for renewal of the license. If the criminal background check shows that any owner has been convicted of any enumerated offense under R.S. 15:587.1 or a felony, a plea of guilty or nolo contendere of a felony, or any offense involving a juvenile victim, the owner or director shall submit the information to the licensing section management staff within 24 hours or no later than the next business day, whichever is sooner, upon receipt of the result.

4. The physical presence of a sex offender in, on, or within 1,000 feet of a child day care facility is prohibited. Providers and child care staff shall not permit an individual convicted of a sex offense as defined in R.S. 15:541 physical access to a child day care facility as defined in R.S. 46:1403.

5. The owner or director of a child day care facility shall be required to call and notify law enforcement agencies and the licensing management staff if a sex offender is on the premises of the child day care facility or within 1,000 feet of the child day care facility. The licensing office shall be contacted immediately. The verbal report shall be followed by a written report.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, LR 18:970 (September 1992), LR 26:1638 (August 2000), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2773 (December 2007), amended LR 36:335 (February 2010), amended by the Department of Children and Family Services, Division of Programs, LR 37:814 (March 2011).

§7365. Center Staff

A. - C.3. ...

4. Criminal Records Check. Documentation of a satisfactory criminal records check from Louisiana State Police as required by R.S. 46:51.2. This check shall be obtained prior to the individual being present in the child care facility. No person who has been convicted of, or pled guilty or nolo contendere to, any offense included in R.S. 15:587.1, R.S. 14:2, R.S. 15:541 or any offense involving a juvenile victim, shall be eligible to own, operate, and/or be present in any capacity in any licensed child care facility. For any owner or operator, a clear criminal background check in accordance with R.S. 46:51.2 shall be obtained prior to the issuance of a license or approval of a change of ownership. In addition, neither an owner, nor a director, nor a director designee shall have a conviction of, or pled guilty or nolo contender to any crime in which an act of fraud or intent to defraud is an element of the offense.

a. An individual who applies for a position of supervisory or disciplinary authority over children in a child care facility may provide a certified copy of their criminal background check obtained from the Bureau of Criminal Identification and Information Section of the Louisiana State Police. If an individual provides a certified copy of their criminal background check obtained from the Louisiana State Police to the provider, this criminal background check shall be accepted by the department for a period of one year from the date of issuance of the certified copy. A photocopy of the certified copy shall be kept on file at the facility in which the individual is currently employed. However, prior

to the one year date of issuance of the certified criminal background check, the provider shall request and obtain a satisfactory criminal check from Louisiana State Police in order for the individual to continue employment at the center. If the clearance is not obtained by the provider prior to the one year date of issuance of the certified criminal background check, the staff person is no longer allowed on the child care premises until a clearance is received.

b. The following information shall be kept on file for independent contractors including therapeutic professionals and extracurricular personnel, e.g. computer instructors, dance instructors, librarians, tumble bus personnel, speech therapists, licensed health care professionals, state-certified teachers employed through a local school board, art instructors, and other outside contractors.

i. Documentation of a satisfactory criminal record check from Louisiana State Police as required by R.S. 46:51.2. This check shall be obtained prior to the individual being present in the child care facility. No person who has been convicted of, or pled guilty or nolo contendere to, any offense included in R.S. 15:587.1, R.S. 14:2, R.S. 15:541 or any offense involving a juvenile victim, shall be present in any capacity in any child care facility.

ii. Independent contractors, therapeutic professionals, and/or extracurricular personnel may provide a certified copy of their criminal background check obtained from the Bureau of Criminal Identification and Information Section of the Louisiana State Police to the provider prior to being present and working with a child or children at the facility. If an individual provides a certified copy of their criminal background check obtained from the Louisiana State Police to the provider, this criminal background check shall be accepted by the department for a period of one year from the date of issuance of the certified copy. A photocopy of the certified copy shall be kept on file at the facility. Prior to the one year date of issuance of the certified copy, the individual shall request and obtain a current certified copy of their criminal background check obtained from the Bureau of Criminal Identification and Information Section of the Louisiana State Police in order to continue providing services to a child or children at the child care facility. If the clearance is not obtained by the provider prior to the one year date of issuance of the certified criminal background check, the individual shall no longer be allowed on the child care premises until a clearance is received. This criminal background check shall be accepted by the department for a period of one year from the date of issuance of the certified copy. A photocopy of the certified copy shall be kept on file at the facility.

c. No felon shall be employed in a Class "B" facility, unless approved in writing by a district judge of the parish and the local district attorney. This statement shall be kept on file at all times by the child care facility and shall be produced upon request to any law enforcement officer.

C.5. - D.7. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, LR 18:970 (September 1992), LR 26:1639 (August 2000),

repromulgated by the Department of Social Services, Office of Family Support, LR 33:2774 (December 2007), amended by the Department of Children and Family Services, Division of Programs, LR 37:815 (March 2011).

Ruth Johnson
Secretary

1103#061

RULE

Department of Children and Family Services Licensing Section

Child Placing Agencies
(LAC 48:I.Chapter 41 and LAC 67:V.Chapters 65 and 73)

In accordance with the Administrative Procedure Act, R.S. 49:953(B), the Department of Children and Family Services (DCFS), Division of Programs, Licensing Section has repealed and amended Sections of the LAC to comply with Act 64 of the 2010 Regular Session of the Louisiana Legislature.

Title 48, Part I, Subpart 3, Chapter 41 and Title 67, Part V, Subpart 8, Chapter 65 has been repealed. Licensing regulations previously contained in these chapters have been consolidated and rewritten and has been promulgated as Title 67, Part V., Subpart 8, Chapter 73, Child Placing Agencies, in accordance with R.S. 46:1401 et seq.

Title 48

HEALTH AND HOSPITALS—GENERAL

Part I. General Administration

Subpart 3. Licensing

Chapter 41. Child Placing Agencies with and without Adoption Services

Subchapter A. General Provisions

§4101. Introduction

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended LR 15:546 (July 1989), amended the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 21:1256 (November 1995), repealed by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:816 (March 2011).

§4103. Licensing Procedures

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended LR 15:546 (July 1989), amended the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 21:1258 (November 1995), repealed by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:816 (March 2011).

§4105. Administration and Organization

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended LR 15:546 (July 1989), amended the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 21:1258 (November 1995), repealed by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:816 (March 2011).

§4107. Personnel

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended LR 15:546 (July 1989), amended the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 21:1258 (November 1995), repealed by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:816 (March 2011).

§4109. Social Services Related to Child Placement

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended LR 15:546 (July 1989), amended the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 21:1258 (November 1995), repealed by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:816 (March 2011).

§4111. Records

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended LR 15:546 (July 1989), amended the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 21:1259 (November 1995), repealed by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:816 (March 2011).

Subchapter B. Foster Care Services Module

§4113. Family Foster Care Services

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended LR 15:546 (July 1989), amended the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 21:1259 (November 1995), LR 31:2955 (November 2005), repealed by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:816 (March 2011).

Subchapter C. Adoption Services Module

§4115. Adoption Services

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended LR 15:546 (July 1989), amended the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 21:1260

(November 1995), repealed by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:816 (March 2011).

§4117. Effective Date

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended LR 15:546 (July 1989), repealed by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:817 (March 2011).

Title 67

SOCIAL SERVICES

Part V. Community Services

Subpart 8. Residential Licensing

Chapter 65. Transitional Living

§6501. Purpose

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S. 46:1451 et seq. and Act 726 of the 2001 Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:92 (January 2004), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2685 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1561 (August 2009), amended LR 36:791 (April 2010), repealed by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:817 (March 2011).

§6503. Authority

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S. 46:1401-1424 and R.S. 46:1414.1.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:92 (January 2004), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2686 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1561 (August 2009), amended LR 36:791, 841 (April 2010), amended by the Department of Children and Family Services, Child Welfare Section, LR 36:1462 (July 2010), repealed by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:817 (March 2011).

§6505. Waivers

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:93 (January 2004), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2686 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1561 (August 2009), amended LR 36:791 (April 2010), repealed by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:817 (March 2011).

§6507. Application for Licensure

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:93 (January 2004), repromulgated by the Department of Social

Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2686 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1561 (August 2009), amended LR 36:791, 835 (April 2010), repromulgated LR 36:1274 (June 2010), repealed by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:817 (March 2011).

§6509. Definitions

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:93 (January 2004), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2686 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1561 (August 2009), amended LR 36:791 (April 2010), repealed by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:817 (March 2011).

§6511. Inspections

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S. 46:1451 et seq. and Act 726 of the 2001 Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:93 (January 2004), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2686 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1562 (August 2009), amended LR 36:792 (April 2010), repealed by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:817 (March 2011).

§6513. General Requirements

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S. 46:1451 et seq. and Act 726 of the 2001 Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:93 (January 2004), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2687 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1562 (August 2009), amended LR 36:792 (April 2010), repealed by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:817 (March 2011).

§6515. Governing Body

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S. 46:1451 et seq. and Act 726 of the 2001 Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:94 (January 2004), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2687 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1562 (August 2009), amended LR 36:792 (April 2010), repealed by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:817 (March 2011).

§6517. Accounting

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S. 46:1451 et seq. and Act 726 of the 2001 Legislative Session.

§6559. Transportation

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:99 (January 2004), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2693 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1569 (August 2009), amended LR 36:798 (April 2010), repealed by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:820 (March 2011).

§6561. Physical Environment

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:99 (January 2004), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2693 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1569 (August 2009), amended LR 36:798 (April 2010), repealed by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:820 (March 2011).

§6563. Capacity

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:99 (January 2004), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2693 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1569 (August 2009), amended LR 36:798 (April 2010), repealed by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:820 (March 2011).

§6565. Emergency Procedures

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:100 (January 2004), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2693 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1569 (August 2009), amended LR 36:798 (April 2010), repealed by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:820 (March 2011).

§6567. Food Service

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:100 (January 2004), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2693 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1570 (August 2009), amended LR 36:798 (April 2010), repealed by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:820 (March 2011).

§6569. Discharge

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S. 46:1451 et seq. and Act 726 of the 2001 Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:100 (January 2004), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2694 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1570 (August 2009), amended LR 36:798 (April 2010), repealed by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:820 (March 2011).

Subpart 8. Residential Licensing

Chapter 73. Child Placing Agencies—General Provisions

§7301. Purpose

A. It is the intent of the legislature to protect the health, safety, and well being of the children of the state who are in out-of-home care on a regular or consistent basis. Toward that end, it is the purpose of Chapter 14 of Title 46 of the Louisiana Revised Statutes of 1950 to establish statewide minimum standards for the safety and well being of children, to ensure maintenance of these standards, and to regulate conditions in these providers through a program of licensing. It shall be the policy of the state to ensure protection of all individuals placed by a provider and to encourage and assist in the improvement of provided services. It is the further intent of the legislature that the freedom of religion of all citizens shall be inviolate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and ACT 64 of the 2010 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section LR 37:820 (March 2011).

§7303. Authority

A. Legislative Provisions

1. The Child Care Facility and Child Placing Act 286 of 1985 as amended (R.S. 46:1401-1424) is the legal authority under which the department prescribes minimum standards for the health, safety and well-being of children placed in foster care and adoption. The rules are in LAC 67:V.Subpart 8, Chapter 73.

2. Public Law 96-272, the Adoption Assistance and Child Welfare Act of 1978 and Act 429 of 1981 Louisiana legislature made permanency planning for children in foster care a matter of federal and state law and public social policy.

3. Public Law 103-382, the Multiethnic Placement Act of 1994, the U.S. Constitution and Title VI of the Civil Rights Act of 1964 provide that an entity which receives federal financial assistance and is involved in adoption or foster care placements may not discriminate on the basis of the race, color or national origin of the adoptive or foster parent or the child involved.

B. Facilities Requiring a License

1. Any institution, society, agency, corporation, facility, person or persons or any other group other than the parent(s) or guardian(s) of a child, engaged in placing a child or children in foster care and/or adoption in Louisiana or in placing a child or children from Louisiana into another state or foreign country is required to be licensed as follows or to work through a licensed agency in the state.

a. Any agency with an office and staff within the state is required to have a license in Louisiana.

b. Any out-of-state agency placing a child in Louisiana is required to have a license issued by the state in which the main office is located and have a Louisiana license or make placements in Louisiana in cooperation with an agency licensed in Louisiana.

c. A child placing agency (CPA) which is operated in conjunction with other programs subject to licensing shall obtain a license for each of the programs.

C. Exemptions

1. The parent(s) or legal custodian(s) are authorized to place a child directly into a foster or adoptive home without a license. The parent(s) or custodian shall not be represented in placing the child(ren) by other than a licensed CPA.

2. Pursuant to ACT 64 of the 2010 Legislative Session, child placing agencies within the Department of Children and Family Services shall be exempt from the provisions of this Chapter. The department is authorized and mandated to perform its child-placing functions in accordance with the standards promulgated by the department for licensed child-placing agencies.

D. Penalties. As stipulated in R.S. 46:1421, whoever operates any child care facility without a valid license shall be fined not less than \$75 nor more than \$250 for each day of such offense.

E. Waiver Request

1. The secretary of the department, in specific instances, may waive compliance with a standard, as long as the health, safety, and well-being of the staff and/or the health, safety, rights or well-being of residents is not imperiled. Standards shall be waived only when the secretary determines, upon clear and convincing evidence, that the economic impact is sufficient to make compliance impractical for the provider despite diligent efforts, and when alternative means have been adopted to ensure that the intent of the regulation has been carried out.

2. Application for a waiver shall be made in writing and shall include:

a. a statement of the provisions for which a waiver is being requested; and

b. an explanation of the reasons why the provisions cannot be met and why a waiver is being requested.

3. The request for a waiver will be answered in writing and approvals will be maintained on file by the requesting provider and the department. The department shall document the reasons for granting the waiver. A waiver shall be granted for a period of one year or as specified by the secretary and will not be renewed if the basis for it no longer exists. If the provider has been granted a waiver by the department, the waiver will be identified on the survey report of any subsequent annual survey report.

F. Variance Request

1. The secretary of the department, in specific instances, may grant an exception to the standards temporarily for the purposes of allowing emergency placement of a child as long as the health, safety, and well-being of the child or other children in the home is not imperiled.

2. A request for a variance shall be made in writing and shall include a statement of the provisions for which the variance is being requested.

3. The request for a variance will be answered in writing and specify the period of time for which the variance

is being granted. A variance may be granted for a length of time not to exceed 90 days, and may be renewed one time, for good cause shown, for an additional 90 day period not to exceed 180 days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and ACT 64 of the 2010 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section LR 37:820 (March 2011).

§7305. Definitions

Abuse—any one of the following acts which seriously endangers the physical, mental, or emotional health of the child:

1. the infliction, attempted infliction, or, as a result of inadequate supervision, the allowance of the infliction or attempted infliction of physical or mental injury upon the child by a parent or any other person;

2. the exploitation or overwork of a child by a parent or any other person; and

3. the involvement of the child in any sexual act with a parent or any other person, or the aiding or toleration by the parent or the caretaker of the child's sexual involvement with any other person or of the child's involvement in pornographic displays or any other involvement of a child in sexual activity constituting a crime under the laws of this state.

Affiliate—

1. with respect to a partnership, each partner thereof;

2. with respect to a corporation, each officer, director and stockholder thereof;

3. with respect to a natural person, that person and any individual related by blood, marriage, or adoption within the third degree of kinship to that person; any partnership, together with any or all its partners, in which that person is a partner; and any corporation in which that person an officer, director or stockholder, or holds, directly or indirectly, a controlling interest;

4. with respect to any of the above, any mandatory, agent, or representative or any other person, natural or juridical acting at the direction of or on behalf of the licensee or applicant; or

5. director of any such.

Child—a person who has not reached age eighteen or otherwise been legally emancipated. The words "child" and "children" are used interchangeably in this Chapter.

Child Placing Agency—any institution, society, agency, corporation, facility, person or persons, or any other group engaged in placing children in foster care or with substitute parents for temporary care or for adoption or engaged in assisting or facilitating the adoption of children, or engaged in placing youth in transitional placing programs but shall not mean a person who may occasionally refer children for temporary care.

Complaint—an allegation that any person is violating any provisions of these standards or engaging in conduct, either by omission or commission, that negatively affects the health, safety, rights, or welfare of any child who is receiving services from a CPA.

Criminal Background Check—the requirement of state law and federal funding rule for checking criminal records for certain offenses prior to employing an individual who will have access to a child in a CPA as well as for prospective foster or adoptive parents.

Department—the Department of Children and Family Services.

Director—the person with authority and responsibility for the on-site, daily implementation and supervision of the overall provider's operation.

Disqualification Period—means the prescriptive period during which the department shall not accept an application from a provider. Any unlicensed operation during the disqualification period shall interrupt running of prescription until the department has verified that the unlicensed operation has ceased.

Effective Date—the date of the revocation, denial, or non-renewal of a license shall be the last day for applying to appeal the action, if the action is not appealed.

Facility—any place, program, facility or agency operated or required by law to operate under a license, including facilities owned or operated by any governmental, profit, nonprofit, private, or church agency.

Foster Care—a social service that provides a planned period of substitute care in a foster home, a relative's home, or other living arrangements for children or youth when their families cannot or will not care for them.

Foster Home—a private home of one or more persons who provide continuing 24-hour substitute parenting for one to six children living apart from their parent(s) or guardian's and are placed for foster care under the supervision of the department or of a licensed child-placing provider.

Foster Parent—an individual(s) who provides foster care with the approval and under the supervision of the department or of a licensed child-placing provider.

Human Service Field—the field of employment similar or related to social services such as social work, psychology, sociology, special education, nursing, rehabilitation counseling, juvenile justice and/or corrections through which a person gains experience in providing services to the public and/or private children that serves to meet the years of experience required for a job as specified on the job description for that position.

Home Study—an evaluation of a home environment conducted in accordance with applicable requirements of the state in which the home is located to determine whether a proposed placement of a child would meet the individual needs of the child, including the child's safety, permanency, health, well-being, and mental, emotional, and physical development.

Injury of Unknown Origin—an injury where the source of the injury was not observed by any person or the source of the injury could not be explained by the child and the injury is suspicious because of the extent of the injury or the location of the injury (e.g., the injury is located in an area not generally vulnerable to trauma).

Interstate Home Study—a home study conducted by a state at the request of another state to facilitate an adoptive or foster placement in the state of a child in foster care under the responsibility of the state.

Legal Custody—the right to have physical custody of the child and to determine where and with whom the child shall reside; to exercise the rights and duty to protect, train, and discipline the child; the authority to consent to major medical, psychiatric, and surgical treatment; and to provide the child with food, shelter, education, and ordinary medical

care, all subject to any residual rights possessed by the child's parents.

Legal Guardian—the caretaker in a legal guardianship relationship. This could be the parent or any provider representative.

Legal Guardianship—the duty and authority to make important decisions in matters having a permanent effect on the life and development of the child and the responsibility for the child's general welfare until he reaches the age of majority, subject to any child rights possessed by the child's parents. It shall include the rights and responsibilities of legal custody.

License—any license issued by the department to operate any child care facility or CPA as defined in R.S. 46:1403.

Neglect—the refusal or unreasonable failure of a parent or caretaker to supply the child with necessary food, clothing, shelter, care, treatment, or counseling for any injury, illness, or condition of the child, as a result of which the child's physical, mental, or emotional health and safety is substantially threatened or impaired (Ch.C Art 603).

Parent—any living person who is presumed to be a parent under the Civil Code or a biological or adoptive mother or father of a child.

Provider—an entity that is responsible for the placement of children in foster care to include the Department of Children and Family Services and any private child placing provider licensed by the department. All owners or operators of a facility, including the director of such facility. If the owner is a corporate entity the owners are the officers, directors, and shareholders of the facility.

Related or Relative—a natural or adopted child or grandchild of the caregiver or a child in the legal custody of the caregiver.

Respite Care—temporary care provided by another individual or family to provide relief to a foster care parent or to allow an adjustment period for the child placed in out-of-home care.

Service Plan—a written plan of action usually developed between the family, child, social worker, and other service providers, that identifies needs, sets goals, and describes strategies and timelines for achieving goals.

Specialized Foster Care—a foster care service to accommodate the needs of a child or youth who is unable to live with the child/youth's own family and who has either an emotional, behavior, medical or developmental problem that requires more time consuming and specialized care with professional oversight based on the child's specific needs but whose needs prevent placement in a basic level foster home.

Substantial Bodily Harm—a physical injury serious enough that a prudent person would conclude that the injury required professional medical attention. It does not include minor bruising, the risk of minor bruising, or similar forms of minor bodily harm that will resolve healthily without professional medical attention.

Therapeutic Foster Care—a foster care service to accommodate the needs of a child or youth who require extremely time consuming, specialized care and supervision from a trained person, and ongoing, frequent professional oversight, based on the child's specific needs but whose needs prevent placement in a basic or specialized foster home.

Transitional Placing Program—a program that places youth, at least 16 years of age, in an independent living situation supervised by a provider with the goal of preparing the youth for living independently without supervision.

Unlicensed Operation—operation of any child care facility or child-placing agency, at any location, without a valid, current license issued by the department.

Variance—an exception granted temporarily for the purpose of emergency admittance of specific children.

Volunteer—an individual who works for the provider and whose work is uncompensated. This may include students, interns, tutors, counselors, and other non-staff individuals who may or may not work directly with the child. Persons who visit the provider solely for providing activities for the provider and who are not left alone with the child are not considered as volunteers.

Waiver—an exemption granted by the secretary of the department, or designee, from compliance with a standard that will not place the child or staff member at risk.

Youth—a person not less than sixteen years of age nor older than twenty one years of age.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and ACT 64 of the 2010 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:821 (March 2011).

§7307. Licensing Requirements

A. General Provisions

1. Before beginning operation, it is mandatory to obtain a license from the department.

2. In addition all facilities shall comply with the requirements of the Americans with Disabilities Act, 42 U.S.C. §12101 et seq. (ADA).

B. Initial Licensing Application Process

1. An initial application for licensing as a CPA provider shall be obtained from the department. A completed initial license application packet for an applicant shall be submitted to and approved by department prior to an applicant providing CPA services. The completed initial licensing packet shall include:

- a. application and non-refundable fee;
- b. Office of Fire Marshal approval for occupancy; if applicable;
- c. Office of Public Health, Sanitarian Services approval, if applicable;
- d. city fire department approval, if applicable;
- e. city or parish building permit office approval, if applicable;
- f. local zoning approval, if applicable;
- g. copy of proof of current general liability and property insurance for facility;
- h. copy of proof of insurance for vehicle(s);
- i. organizational chart or equivalent list of staff titles and supervisory chain of command;
- j. director resumé and proof of educational requirement;
- k. supervisor and case manager resumé and proof of educational requirement;
 - l. list of consultant/contract staff to include name, contact info and responsibilities;
- m. copy of program plan;
- n. copy of table of contents of all policy and procedure manuals;

- o. copy of evacuation plan, if applicable;
- p. copy of house rules and regulations, if applicable;
- q. copy of grievance process;
- r. a floor sketch or drawing of the premises to be licensed, if applicable; and
- s. any other documentation or information required by the department for licensure.

2. If the initial licensing packet is incomplete, the applicant will be notified of the missing information and will have 10 working days to submit the additional requested information. If the department does not receive the additional requested information within the 10 working days, the application will be closed. After an initial licensing application is closed, an applicant who is still interested in becoming a CPA shall submit a new initial licensing packet with a new application fee to start the initial licensing process. Once the department has determined the application is complete, the applicant will be notified to contact the department to schedule an initial survey. If an applicant fails to contact the department and coordinate the initial survey within 45 days of the notification, the initial licensing application shall be closed. After an initial licensing application is closed, an applicant who is still interested in becoming a CPA shall submit a new initial licensing packet with a new application fee to re-start the initial licensing process.

C. Initial Licensing Survey

1. Prior to the initial license being issued to the CPA, an initial licensing survey shall be conducted on-site at the CPA to assure compliance with all licensing standards. The initial licensing survey shall be an announced survey. No resident shall be provided services by the CPA until the initial licensing survey has been performed and the department has issued an initial license.

2. In the event the initial licensing survey finds the CPA is compliant with all licensing laws and standards, and is compliant with all other required statutes, laws, ordinances, rules, regulations, and fees, the department may issue a full license to the provider after receipt of the annual licensing fee as prescribed by the department. The license shall be valid until the expiration date shown on the license, unless the license is modified, extended, revoked, suspended, or terminated.

3. In the event the initial licensing survey finds the CPA is noncompliant with any licensing laws or standards, or any other required statutes, laws, ordinances, rules, or regulations that present a potential threat to the health, safety, or welfare of the participants, the department shall deny the initial license.

4. In the event the initial licensing survey finds that the CPA is noncompliant with any licensing laws or standards, statutes, laws, ordinances, or rules but the department, in its sole discretion, determines that the noncompliance does not present a threat to the health, safety, or welfare of the participants, the department may issue an initial license for a period not to exceed three months. The provider shall submit a corrective action plan to the department. The corrective action plan shall include a description of how the deficiency shall be corrected and the date by which corrections shall be completed. The department must approve the corrective action plan prior to issuing the initial license. If the department determines, prior

to the expiration date of the initial license, that such noncompliance or deficiencies have been corrected, a license will be issued. If the department determines that such noncompliance or deficiencies have not been corrected, the license will expire and all operations shall cease. The provider shall be required to begin the initial licensing process again by submitting a new initial license application packet and fee.

5. The license shall be displayed in a prominent place at the CPA except that those operated by a church or religious organization may be exempt from such requirement provided the license is available upon request.

6. Once a CPA has been issued a license, the department shall conduct licensing and other surveys at intervals deemed necessary by the department to determine compliance with licensing standards, as well as, other required statutes, laws, ordinances, rules, regulations, and fees. These surveys shall be unannounced.

7. The department shall remove any child or all children from any home or when it is determined that one or more deficiencies exist within the home that place the health and well being of the child or children in imminent danger. The child or children shall not be returned to the home until such time as it is determined that the imminent danger has been removed.

8. Department staff shall be given access to all areas of the facility and to all relevant files during any licensing or other survey. They shall be allowed to interview any provider staff or participant as necessary to conduct the survey.

9. If an applicant or member of his/her immediate family has had a previous license revoked, refused or denied, upon reapplication, the applicant shall provide written evidence that the reason for such revocation, refusal or denial no longer exists.

D. Fees

1. There shall be an annual fee as prescribed by the department for a license or renewed license, payable to the department 30 days prior to the date of issuance by certified check or money order. Non-payment of fee by due date may result in revocation of licensing.

2. Other license fees include:

a. replacement fee of \$25 for replacing a license when changes are requested, i.e., change in capacity, name change, age range, etc. No replacement charge will be incurred when the request coincides with the regular renewal of a license;

b. a processing fee of \$5 for issuing a duplicate license with no changes.

E. Renewal of License

1. The license shall be renewed on an annual basis.

2. The provider shall submit, at least 60 days prior to its license expiration date, a completed renewal application form and applicable fee. The following documentation must also be included:

- a. Office of Fire Marshal approval for occupancy;
- b. Office of Public Health, Sanitarian Services approval;
- c. city fire department approval, if applicable;
- d. copy of proof of current general liability and property insurance for facility; and
- e. copy of proof of insurance for vehicle(s).

3. Prior to renewing the CPA license, an on-site survey shall be conducted to assure compliance with all licensing laws and standards. If the CPA is found to be in compliance with the licensing laws and standards, and any other required statutes, laws, ordinances, or regulations, the license shall be renewed for a 12 month period.

4. In the event the annual licensing survey finds the CPA is non-compliant with any licensing laws or standards, or any other required statutes, ordinances or regulations but the department, in its sole discretion, determines that the noncompliance does not present a threat to the health, safety, or welfare of the participants, the provider shall be required to submit a corrective action plan to the department for approval. The department shall specify the timeline for submitting the corrective action plan based on such non-compliance or deficiencies cited but no later than 10 days from the date of notification. The corrective action plan shall include a description of how the deficiency shall be corrected and the date by which correction(s) shall be completed. Failure to submit an approved corrective action plan timely shall be grounds for non-renewal.

5. If it is determined that such noncompliance or deficiencies have not been corrected prior to the expiration of the license, the department may issue an extension of the license not to exceed 60 days.

6. When it is determined by the department that such noncompliance or deficiencies have been corrected, a license will be issued for a period not to exceed 12 months.

7. If it is determined that all areas of noncompliance or deficiencies have not been corrected prior to the expiration date of the extension, the department may revoke the license.

F. Notification of Changes

1. A license is not transferable to another person or location.

2. When a provider changes location, it is considered a new operation and a new application and fee for licensure shall be submitted 30 days prior to the anticipated move. All items listed in §7307.B.1 shall be in compliance for the new location. An onsite survey is required prior to change of location.

3. When a provider is initiating a change in ownership a written notice shall be submitted to the department. Within five working days of the change of ownership, the new owner shall submit a completed application, the applicable licensing fee and a copy of bill of sale or a lease agreement.

4. The provider shall provide written notification to the department within 30 days of changes in administration and professional personnel, program direction and admission criteria. A statement to the qualifications of the new employee shall be sent to the office.

G. Denial, Revocation, or Non-renewal of License

1. An application for a license may be denied, revoked or not renewed for any of the following reasons:

- a. cruelty or indifference to the welfare of the residents in care;
- b. violation of any provision of the standards, rules, regulations, or orders of the department;
- c. disapproval from any whose approval is required for licensing;
- d. nonpayment of licensing fee or failure to submit a licensing application;

e. any validated instance of abuse, neglect, corporal punishment, physical punishment, or cruel, severe or unusual punishment, if the owner is responsible or if the staff member who is responsible remains in the employment of the licensee;

f. the facility is closed with no plans for reopening and no means of verifying compliance with minimum standards for licensure; or

g. any act of fraud such as falsifying or altering documents required for licensure;

h. provider refuses to allow the Licensing Section to perform mandated duties, i.e., denying entrance to the facility, lack of cooperation for completion of duties, intimidating or threatening DCFS staff, etc.

2. Even if a facility is otherwise in substantial compliance with these standards, an application for a license may be denied, revoked or not renewed for any of the following reasons:

a. the owner, director, officer, board of directors member, or any person designated to manage or supervise the provider or any staff providing care, supervision, or treatment to a resident of the facility has been convicted of or pled guilty or *nolo contendere* to any offense listed in R.S. 15:587.1. A copy of a criminal record check performed by the Louisiana State Police (LSP) or other law enforcement provider, or by the Federal Bureau of Investigation (FBI), or a copy of court records in which a conviction or plea occurred, indicating the existence of such a plea or conviction shall create a rebuttal presumption that such a conviction or plea exists;

b. the provider, after being notified that an officer, director, board of directors member, manager, supervisor or any employee has been convicted of or pled *nolo contendere* to any offense referenced above, allows such officer, director, or employee to remain employed, or to fill an office of profit or trust with the provider. A copy of a criminal record check performed by the LSP or other law enforcement provider, or by the FBI, or a copy of court records in which a conviction or plea occurred, indicating the existence of such a plea or conviction shall create a reputable presumption that such a conviction or plea exists;

c. failure of the owner, director or any employee to report a known or suspected incident of abuse or neglect to child protection authorities;

d. revocation or non-renewal of a previous license issued by a state or federal provider;

e. a substantial history of non-compliance with licensing statutes or standards, including but not limited to failure to take prompt action to correct deficiencies, repeated citations for the same deficiencies, or revocation or denial of any previous license issued by the department;

f. failure to timely submit an application for renewal or to timely pay required fees; and/or

g. operating any unlicensed facility and/or program.

3. If a license is revoked, denied or refused, a license may also be denied or refused to any affiliate of the licensee or applicant. For the purpose of this Section, "affiliate" means:

a. with respect to a partnership, each partner thereof;

b. with respect to a corporation, each officer, director and stockholder thereof; and

c. with respect to a natural person: anyone related within the third degree of kinship to that person; each partnership and each partner thereof which that person or any affiliate of that person is a partner; and each corporation in which that person or any affiliate of that person is an officer, director or stockholder.

4. In the event a license is revoked or renewal is denied, (other than for cessation of business or non-operational status), or voluntarily surrendered to avoid adverse action any owner, officer, member, manager, director or administrator of such licensee shall be prohibited from owning, managing, directing or operating another licensed facility for a period of not less than two years from the date of the final disposition of the revocation or denial action. The lapse of two years shall not automatically restore a person disqualified under this provision to eligibility for employment. The department, at its sole discretion, may determine that a longer period of disqualification is warranted under the facts of a particular case.

H. Posting of Notices of Revocation

1. The notice of revocation of the license shall be prominently posted.

a. The Department of Children and Family Services shall prominently post a notice of revocation action at each public entrance of the CPA within one business day of such action. This notice must remain visible to the general public, other placing agencies, parents, guardians, and other interested parties who are involved with children who attend the child care facility.

b. It shall be a violation of these rules for a provider to permit the obliteration or removal of a notice of revocation that has been posted by the department. The provider shall ensure that the notice continues to be visible the general public, other placing agencies, parents, guardians, and other interested parties throughout the pendency of any appeals of the revocation.

c. The provider shall notify the department's licensing section in writing immediately if the notice is removed or obliterated.

d. Failure to maintain the posted notice of revocation required under these rules shall be grounds for denial, revocation or non-renewal of any future license.

I. Disqualification of Facility and Provider

1. If a facility's license is revoked or not renewed due to failure to comply with state statutes and licensing rules, the department shall not accept a subsequent application from the provider for that facility or any new facility for a minimum period of two years after the effective date of revocation or non-renewal or a minimum period of two years after all appeal rights have been exhausted, whichever is later (the disqualification period). Any pending application by the same provider shall be treated as an application for a new facility for purposes of this section and shall be denied and subject to the disqualification period. Any subsequent application for a license shall be reviewed by the secretary or her designee prior to a decision being made to grant a license. The department reserves the right to determine, at its sole discretion, whether to issue any subsequent license.

2. Any voluntary surrender of a license by a facility facing the possibility of adverse action against its license (revocation or non-renewal) shall be deemed to be a revocation for purposes of this rule, and shall trigger the

same disqualification period as if the license had actually been revoked.

3. In addition, if the applicant has had a substantial history of non-compliance, including but not limited to revocation of a previous license, operation without a license, or denial of one or more previous applications for licensure, the department may refuse to accept a subsequent application from that applicant for a minimum period of 24 months after the effective date of denial.

4. With respect to an application in connection with the revoked, denied, or not renewed facility, the disqualification period provided in this Section shall include any affiliate of the provider.

J. Appeal Process

1. If the department refuses to grant or renew a license, if a license is revoked, the procedure will be as follows.

a. The department shall notify the licensee, or applicant in writing of the denial or revocation and the reasons for that denial or revocation and the right of appeal.

b. The program director or owner may appeal this decision by submitting a written request with the reasons to the secretary, Department of Children and Family Services, Bureau of Appeals, P. O. Box 2994, Baton Rouge, LA 70821-9118. This written request shall be postmarked within 15 days of the receipt of the notification in §7107.H.1 above.

c. The Division of Administrative Law shall set a hearing to be held within 30 days after receipt of such a request except as provided in the Administrative Procedures Act.

d. An administrative law judge shall conduct the hearing. Within 90 days after the date the appeal is filed, the administrative law judge shall notify the appellant in writing of the decision, either affirming or reversing the original decision. If the department's decision is upheld, the facility shall terminate operation immediately.

2. If the facility continues to operate without a license, the department may file suit in the district court in the parish in which the facility is located for injunctive relief.

K. Voluntary Closure

1. When a licensee voluntarily ceases operation, the licensee shall notify the department in writing at least 30 days before the closure date.

2. The provider shall make adequate preparation and arrangements for the care, custody and control of any children in the custody and/or care of the provider.

3. The provider shall make arrangements for the preservation of records.

L. Complaint Process

1. In accordance with R.S. 46:1418, the department shall investigate all complaints (except complaints concerning the prevention or spread of communicable diseases), including complaints alleging abuse or neglect, within prescribed time frames as determined by the department based on the allegation(s) of the complaint. All complaint investigation will be initiated within 30 days.

2. All complaint surveys shall be unannounced surveys.

3. A written report of any noncompliance or deficiencies will be given to the provider. The provider shall be required to submit a corrective action plan to the department for approval. The department shall specify the

timeline for submitting the corrective action plan based on the areas of non-compliance cited but no later than 10 days from the date of receipt of the notification. The corrective action plan shall include a description of how the deficiency shall be corrected and the date by which corrections shall be completed. If it is determined that all areas of noncompliance or deficiencies have not been corrected, the department may revoke the license.

4. Except in cases alleging abuse or neglect, the complainant will be notified in writing of the results of the complaint investigation conducted by the department's licensing section.

5. If, because of the nature of the allegations, state law or department policy requires that the complaint be handled by another office, or board (including another office or board within the department), the complaint will be referred to the appropriate office or board without delay. Upon such referral, except in cases involving abuse or neglect, the complainant will be notified, in writing, of the referral.

6. The complaint procedure shall be posted conspicuously in the facility including the name, address, and telephone number of the required department units to be notified.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and ACT 64 of the 2010 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:823 (March 2011)

§7309. Administration and Operation

A. Department Access

1. The provider shall allow representatives of the department in the performance of their mandated duties to inspect all aspects of a program's function that impacts on children and to interview any staff member or child. The department representatives shall be admitted immediately and without delay, and shall be given free access to all areas of a facility, including its grounds.

2. The provider shall make any information that the provider is required to have under the present standards, and any information reasonably related to determination of compliance with these standards available to the department. The children's rights shall not be considered abridged by this standard.

B. Other Jurisdictional Approvals

1. The provider shall comply and show proof of compliance with all relevant standards, regulations and requirements established by federal, state, local and municipal regulatory bodies.

2. Except for a child in the custody of or otherwise made the legal responsibility of the department or the Department of Corrections, Office of Juvenile Justice, the provider shall be responsible for obtaining the following:

a. agreement for voluntary care signed by the custodian; or

b. order from a court of competent jurisdiction placing the child into the custody of the child-placing provider.

C. Governing Body. The provider shall have an identifiable governing body with responsibility for and authority over the policies, procedures and activities of the provider.

1. The provider shall have documents identifying all members of the governing body, their addresses, the term of

their membership (if applicable), officers of the governing body (if applicable) and the terms of office of all officers (if applicable).

2. When the governing body of a provider is composed of more than one person, the governing body shall hold formal meetings at least twice a year.

3. When the governing body is composed of more than one person, a provider shall have written minutes of all formal meetings of the governing body and bylaws specifying frequency of meetings and quorum requirements.

D. Responsibilities of a Governing Body. The governing body of the provider shall:

1. ensure the provider's compliance and conformity with the provider's charter;

2. ensure the provider's continual compliance and conformity with all relevant federal, state, local and municipal laws and standards;

3. ensure the provider is adequately funded and fiscally sound by reviewing and approving the provider's annual budget or cost report;

4. ensure the provider is housed, maintained, staffed and equipped appropriately considering the nature of the provider's program;

5. designate a person to act as director and delegate sufficient authority to this person to manage the provider;

6. formulate and annually review, in consultation with the director, written policies and procedures concerning the provider's philosophy, goals, current services, personnel practices and fiscal management;

7. have the authority to dismiss the director;

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

9. inform designated representatives of the department prior to initiating any substantial changes in the program, services or physical location of the provider.

E. Authority to Operate

1. A private provider shall have documentation of its authority to operate under state law.

2. A privately owned provider shall have documentation identifying the names and addresses of owners.

3. A corporation, partnership or association shall identify the names and addresses of its members and officers and shall, where applicable, have a charter, partnership agreement, constitution, and articles of association or bylaws.

F. Accessibility of Director. The director, or a person authorized to act on behalf of the director, shall be accessible to provider staff or designated representatives of the department at all times (24 hours per day, 7 days per week).

G. Statement of Philosophy

1. The provider shall have a written statement of its child placing philosophy, purpose and program. The statement shall contain a description of all the services the provider provides to include:

a. the extent, limitation, and scope of the services for which a license is sought;

b. the geographical area to be served; and

c. the ages and types of children to be accepted for placement.

2. The statement shall be one that has been adopted by the governing body. When the provider is operated under a

charter or articles of incorporation, all of its functions shall be stated therein.

3. When a provider adds a new function to its program, its governing body shall adopt a supplementary statement of such function.

H. Policies and Procedures

1. The provider shall have a clearly defined intake policy in keeping with its stated purpose and it should be clear from the practices of the provider that it is carrying out these purposes.

a. Provider intake policy shall prohibit discrimination on the basis of race, color, creed, sex, national origin, handicapping condition, or ancestry.

b. A provider shall have a written description of admission policies and criteria which expresses the needs, problems, situations or patterns best addressed by its program. These policies shall be available to the legally responsible person for any child referred for placement.

2. The provider shall have operational and program policy and procedure manuals that are current and clearly stated in writing to ensure the practices of the provider are in keeping with its stated purpose and with minimum requirements for child placement.

3. The provider policies and procedures shall cover such areas as:

a. personnel;

b. admission;

c. social services related to child placement;

d. financial arrangements;

e. medical care;

f. personal care and supervision for children;

g. discipline;

h. resource development and utilization;

i. social services related to post-placement;

j. abuse and neglect;

k. confidentiality;

l. records;

m. complaints; and

n. grievances.

4. The provider shall develop written policies and procedures regarding employees of the provider serving as a foster parent or respite care provider.

5. The provider shall develop written policies and procedures that address the prevention or appearance of:

a. a conflict of interest; or

b. misuse of influence.

I. Location and Equipment

1. The provider shall provide suitable space for the following purposes:

a. office and reception areas which provide comfort, safety, privacy, and convenience for children and staff;

b. areas for confidential interviewing with parent(s) and children and visitation between parent(s) and children if applicable to the program;

c. storage areas for personnel and child records which provide controlled access, retrieval, and confidentiality.

2. The provider shall maintain suitable equipment in good working condition for the operation of the office and the functioning of the staff.

3. The provider shall provide furnishings which are clean and safe.

4. The provider shall assist children and families in arranging transportation necessary for implementing the child's service plan.

5. The provider shall have means of transporting children which are equipped with safety seats in accordance with the laws and standards.

6. The provider and staff shall maintain and operate vehicles used for transporting children in safe condition, in conformity with appropriate motor vehicle laws and standards.

7. The provider shall carry liability insurance or determine that it is carried on all offices and vehicles used for providing services and transporting children.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and ACT 64 of the 2010 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:826 (March 2011).

§7311. Provider Responsibilities

A. Human Resources

1. Policies and Procedures. The provider shall have written policies and procedures that include:

a. a plan for recruitment, screening, orientation, ongoing training, development, supervision, and performance evaluation of staff members to include contract services and volunteers;

b. written job descriptions for each staff position including volunteers;

c. health screening of all staff in accordance with public health guidelines to include screening for communicable diseases;

d. an employee grievance process;

e. abuse and neglect reporting procedures that require all employees to report any incidents of abuse or neglect whether that abuse or neglect is done by another staff member, a family member, a child, or any other person; and

f. preventing discrimination.

2. Personnel Requirements

a. The provider shall employ a sufficient number of qualified staff and delegate sufficient authority to such staff to perform the following functions:

i. administrative;

ii. fiscal;

iii. clerical;

iv. child services;

v. record keeping and reporting;

vi. social service; and,

vii. ancillary services.

b. The provider shall ensure that all staff members are properly certified or licensed as legally required and appropriately qualified for their position.

c. Personnel can work in more than one capacity as long as they meet all of the qualifications of the position and have met the trainings requirements.

d. In all instances, child placement staff shall include a person meeting the qualifications of a supervisor of placement services.

e. A staff person shall be delegated supervisory authority and responsibility in the short-term absence of the supervisor of placement services for illness, vacation, jury or

military duty, professional seminars and meetings or in short-term periods when the position is vacant.

f. A person serving as acting supervisor shall meet the qualifications of supervisor of placement services. If there is no one on staff who meets the qualification, the provider may meet the minimum requirements for licensing by entering into an agreement with another provider for supervision or by entering into a contractual agreement with a private practitioner who meets the qualifications and is a board certified social worker.

3. Personnel Qualifications

a. Director. The director shall meet one of the following qualifications:

i. a bachelor's degree in a human service field or business administration, public administration, childcare administration plus three years experience relative to the population being served. One year of administrative experience in social services may be substituted for two years of regular experience. A master's degree plus two years of social service experience may be substituted for the three years of experience. An alternative may be a bachelor of social work (BSW) degree or professional equivalent with three years experience working with children, one year of which may be experience in administration; or

ii. a master's degree in health care administration or in a human service related field; or

iii. in lieu of a degree, six years of administrative experience in health or social services, or a combination of undergraduate education and experience for a total of six years.

4. Personnel Job Duties

a. The director shall be responsible for:

i. implementing and complying with policies and procedures adopted by the governing body;

ii. adhering to all federal and state laws and standards pertaining to the operation of the provider;

iii. address areas of non-compliance identified by annual survey and complaint investigations;

iv. directing the program;

v. representing the provider in the community;

vi. delegating appropriate responsibilities to other staff including the responsibility of being in charge of the provider during their absence;

vii. recruiting qualified staff and employing, supervising, evaluating, training and terminating employment of staff;

viii. providing leadership and carrying supervisory authority in relation to the provider;

ix. providing consultation to the governing body in carrying out their responsibilities, interpreting to them the needs of children, making needed policy revision recommendations and assisting them in periodic evaluation of the provider's services;

x. preparing the annual budget for the governing body's consideration, keeping the body informed of financial needs, and operating within the established budget;

xi. supervising the provider's management including building, maintenance and purchasing;

xii. participating with the governing body in interpreting the provider's need for financial support;

- xiii. establishing effective communication between staff and children and providing for their input into program planning and operating procedures;
- xiv. reporting injuries, deaths and critical incidents involving children to the appropriate authorities;
- xv. supervising the performance of all persons involved in any service delivery/direct care to children; and,
- xvi. completing an annual performance evaluation of all staff. For any person who interacts with children, a provider's performance evaluation procedures shall address the quality and quantity of their work.

5. Orientation

a. The provider's orientation program shall include the following topics for all staff within 15 working days of the date of employment:

- i. philosophy, organization, program, practices and goals of the provider;
- ii. specific responsibilities of assigned job duties;
- iii. administrative procedures;
- iv. children's rights;
- v. detecting and reporting suspected abuse and neglect;
- vi. confidentiality; and
- vii. reporting incidents.

b. All staff shall sign a statement of understanding certifying that such training has occurred.

c. A new employee shall not be given sole responsibility until training is completed.

6. Annual Training

a. The provider shall ensure that all staff receives training on an annual basis in the following topics:

- i. administrative procedures and programmatic goals;
- ii. children's rights;
- iii. detecting and reporting suspected abuse and neglect;
- iv. confidentiality; and
- v. reporting incidents.

b. All staff shall sign a statement of understanding certifying that such training has occurred.

c. The provider shall maintain sufficient information available to determine content of training. This information shall be available for review.

7. Volunteers

a. Providers who utilize volunteers to perform staff functions shall:

- i. have orientation, training, and be given a job description for the duties they are to perform;
- ii. have a criminal background check as required in R.S. 15:587.1 and R.S. 46:51.2;
- iii. have a completed state central registry disclosure form prepared by the department whether or not his/her name is currently recorded on the state central registry for a justified finding of abuse or neglect and he/she is the named perpetrator as required in R.S. 46:1414.1.

B. Record Keeping

1. Administrative Records

a. The provider shall have an administrative file that shall contain, at a minimum, the following:

- i. a written program plan describing the services and programs offered by the provider;
- ii. organizational chart of the provider;

iii. all leases, contracts and purchase-of-service agreements to which the provider is a party;

iv. insurance policies. Every provider shall maintain in force at all times a comprehensive general liability insurance policy. This policy shall be in addition to any professional liability policies maintained by the provider and shall extend coverage to any staff member who provides transportation for any resident in the course and scope of his/her employment;

v. all written agreements with appropriately qualified professionals, or a state provider, for required professional services or resources not available from employees of the provider; and,

vi. written documentation of all residents' exits and entrances from provider property not covered under summary of attendance and leave. Documentation must include, at a minimum, date, time and destination.

2. Personnel Records

a. The provider shall have a personnel file for each employee that shall contain, at a minimum, the following:

- i. the application for employment, including the resume of education, training, and experience, if applicable;
- ii. a criminal background check in accordance with state law;
- iii. evidence of applicable professional or paraprofessional credentials/certifications according to state law;

iv. documentation of any state or federally required medical examinations or testing;

v. documentation of employee's orientation and annual training received;

vi. employee's hire and termination dates;

vii. documentation of current driver's license for operating provider or private vehicles in transporting residents;

viii. annual performance evaluations to include his/her interaction with residents, family, and other providers;

ix. personnel action, other appropriate materials, reports and notes relating to the individual's employment with the provider; and,

x. annual state central registry disclosure form prepared by the department whether or not his/her name is currently recorded on the state central registry for a justified finding of abuse or neglect and he/she is the named perpetrator.

b. Staff shall have reasonable access to his/her file and shall be allowed to add any written statement he/she wishes to make to the file at any time.

c. The personnel file of staff shall be retained for at least three years after termination of employment.

3. Accounting Records

a. The provider shall establish a system of business management and staffing to assure maintenance of complete and accurate accounts, books and records.

b. The provider shall ensure that all entries in records are legible, signed by the person making the entry and accompanied by the date on which the entry was made.

c. All records shall be maintained in an accessible, standardized order and format, and shall be retained and disposed of according to state and federal law.

d. The provider shall have sufficient space, facilities and supplies for providing effective accounting record keeping services.

4. Confidentiality and Retention of Case Records

a. The provider shall have written policies and procedures for the maintenance, security and retention of records. The provider shall specify who shall supervise the maintenance of records, who shall have custody of records, and to whom records may be released and disposition or destruction of closed service record materials. Records shall be the property of the provider, and the provider, as custodian, shall secure records against loss, tampering or unauthorized use or access.

b. The provider shall maintain the confidentiality of all children's records to include all court related documents, as well as, educational and medical records. Every employee of the provider has the obligation to maintain the privacy of the child and his/her family and shall not disclose or knowingly permit the disclosure of any information concerning the child or his/her family, directly or indirectly, to other children in the provider or any other unauthorized person.

c. When the child is of majority age and not interdicted, a provider shall obtain the child's written, informed permission prior to releasing any information from which the child or his/her family might be identified, except for authorized state and federal agencies.

d. When the child is a minor or is interdicted, the provider shall obtain written, informed consent from the legal guardian(s) prior to releasing any information from which the child might be identified, except for accreditation teams and authorized state and federal agencies.

e. The provider shall, upon written authorization from the child or his/her legal guardian(s), make available information in the record to the child, his/her counsel or the child's legal guardian(s). If, in the professional judgment of the administration of the provider, it is felt that information contained in the record would be injurious to the health or welfare of the child, the provider may deny access to the record. In any such case, the provider shall prepare written reasons for denial to the person requesting the record and shall maintain detailed written reasons supporting the denial in the child's file.

f. The provider may use material from the child's records for teaching and research purposes, development of the governing body's understanding and knowledge of the provider's services, or similar educational purposes, provided names are deleted, other identifying information are disguised or deleted, and written authorization is obtained from the child or his/her legal guardian(s).

g. All records shall be retained and disposed of in accordance with state and federal laws. Any person who violates the requirement of confidentiality shall be fined not more than five hundred dollars or imprisoned for not more than ninety days or both.

h. The provider must maintain the original records in an accessible manner for a period of five years following the death or discharge of a child.

i. In the event of a change of ownership, the child records shall remain with the provider.

j. If the provider closes, the owner of the provider within the state of Louisiana shall store the child records for five years.

k. The provider is responsible for training all staff at least annually in confidentiality of information and records.

C. Incidents

1. Critical Incidents. The provider shall have written policies and procedures for documenting, reporting, investigating and analyzing all critical incidents.

a. The provider shall report any of the following critical incidents to the Child Protection Unit located in the parish in which the provider is located. The Child Protection Unit shall be responsible for notifying the DCFS Licensing Section, when it is identified that a potential non-compliance of a licensing standard has occurred:

- i. abuse;
- ii. neglect;
- iii. injuries of unknown origin; or
- iv. death.

b. The provider shall report any of the following critical incidents to the DCFS Licensing Section:

- i. attempted suicide;
- ii. serious threat or injury to the child's health, safety or well-being, i.e. elopement or unexplained absence of a child;
- iii. injury with substantial bodily harm while in seclusion or during use of personal restraint; or
- iv. unplanned hospitalizations, emergency room visits, and walk-in or other outpatient emergency care visit.

c. The director or designee shall:

- i. immediately verbally notify the legal guardian of the incident;
- ii. immediately verbally notify the appropriate law enforcement authority in accordance with state law;
- iii. submit the mandated critical incident report form within 24 hours of the incident to the appropriate unit as identified above based on the type of critical incident;
- iv. submit a final written report of the incident, if indicated, to the appropriate unit identified above base on the type of critical incident as soon as possible but no later than five working days;
- v. submit a final written report of the incident to the legal guardian as soon as possible but no later than five working days; and
- vi. conduct an analysis of the incident and take appropriate corrective steps to prevent future incidents from occurring.
- vii. maintain copies of any written reports or notifications in the child's record.

2. Other Incidents. The provider shall have written policies and procedures for documenting, reporting, investigating and analyzing all documenting, reporting, investigating and analyzing all other accidents, incidents and other situations or circumstances affecting the health, safety or well-being of a child or children.

a. The provider shall initiate a detailed report of any other unplanned event or series of unplanned events, accidents, incidents and other situations or circumstances affecting the health, safety or well-being of a child or children excluding those identified in C.1.a. above within 24 hours of the incident. At a minimum, the incident report shall contain the following:

- i. date and time the incident occurred;
- ii. a brief description of the incident;
- iii. where the incident occurred;
- iv. any child or staff involved in the incident;
- v. immediate treatment provided, if any;
- vi. symptoms of pain and injury discussed with the physician;
- vii. signature of the staff completing the report;
- viii. name and address of witnesses;
- ix. date and time the legal guardian was notified;
- x. any follow-up required;
- xi. preventive actions to be taken in the future; and
- xii. any documentation of supervisory and administrative reviews.

b. A copy of all written reports shall be maintained in the child's record.

D. Abuse and Neglect

1. The provider shall have a written policy and procedure for detecting and reporting suspected abuse or neglect that:

- a. describes communication strategies used by the provider to maintain staff awareness of abuse prevention, current definitions of abuse and neglect, mandated reporting requirements to the child protection provider and applicable laws;
- b. ensures the child is protected from potential harassment during the investigation;
- c. addresses when an examination by a medical professional is indicated;
- d. ensures that any staff member who abuses or neglects a child will be disciplined;
- e. ensures the staff member involved in the incident does not work directly with the child involved in the allegation(s) until an internal investigation is conducted by the provider or the child protection unit makes an initial report;
- f. ensures the staff member that may have been involved in the incident is not involved in conducting the investigation;
- g. ensures that confidentiality of the incident is protected.

2. Any case of suspected child abuse or neglect shall be reported according to the guidelines outlined in the Children's Code Articles Ch.C. 609 and Ch.C. 610.

E. Children's Rights

1. Provider Responsibility

a. The provider shall have written policies and procedures that ensure each child's rights are guaranteed and protected.

b. None of the child's rights shall be infringed upon or restricted in any way unless such restriction is necessary to the resident's individual service plan. When individual rights restrictions are implemented, the provider shall clearly explain and document any restrictions or limitations on those rights, the reasons that make those restrictions medically necessary in the child's individual service plan and the extent and duration of those restrictions. The documentation shall be signed by provider staff, the child and the child's legal guardian(s) or parent(s), if indicated. No service plan shall restrict the access of a child to legal counsel or restrict the access of state or local regulatory officials to a resident.

c. Children with disabilities have the rights guaranteed to them under the Americans with Disabilities Act (ADA), 42 U.S.C. §12101 et seq. and regulations promulgated pursuant to the ADA, 28 C.F.R. Parts 35 and 36 and 49 C.F.R. Part 37; §504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794, and regulations promulgated pursuant thereto, including 45 C.F.R. Part 84. These include the right to receive services in the most integrated setting appropriate to the needs of the individual; to obtain reasonable modifications of practices, policies, and procedures where necessary (unless such modifications constitute a fundamental alteration of the provider's program or pose undue administrative burdens); to receive auxiliary aids and services to enable equally effective communication; to equivalent transportation services; and to physical access to a provider's facilities.

2. Privacy

a. A child has the right to personal privacy and confidentiality. Any records and other information about the child shall be kept confidential and released only with the child's or legal guardian's expressed written consent or as required by law.

b. A child shall not be photographed or recorded without the express written consent of the child and the child's legal guardian(s). All photographs and recordings shall be used in a manner that respects the dignity and confidentiality of the child.

c. A child shall not participate in research projects without the express written consent of the child and the child's legal guardian(s).

d. A child shall not participate in activities related to fundraising and publicity without the express written consent of the child and the child's legal guardian(s).

3. Contact with Family and Collaterals

a. A child has the right to consult and have visits with his/her family (including but not limited to his or her mother, father, grandparents, brothers, and sisters), legal guardian(s) and friends subject only to reasonable rules. The reasons for any special restrictions shall be recorded in the child's service plan and explained to the child and his or her family. The service plan manager shall review the special restrictions every 30 days and, if restrictions are renewed, the reasons for renewal shall be recorded in the child's service plan. No service plan shall restrict home visits without approval from the legal guardian.

b. A child has the right to telephone communication. The provider shall allow a child to receive and place telephone calls in privacy subject only to reasonable rules and to any specific restrictions in the child's service plan. The service plan manager shall formally approve any restriction on telephone communication in a child's service plan. The service plan manager shall review the special restrictions every 30 days and, if restrictions are renewed, the reasons for renewal shall be recorded in the child's service plan. The cost for long distance calls shall not exceed the usual and customary charges of the local phone company provider. There shall be no restrictions on communication between a child and the child's legal counsel.

c. A child has the right to send and receive mail. The provider shall allow children to receive mail unopened, uncensored and unread by staff unless contraindicated by the child's service plan. The service plan manager shall review

this restriction every 30 days. No service plan shall restrict the right to write letters in privacy and to send mail unopened, uncensored and unread by any other person. Correspondence from a child's legal counsel shall not be opened, read or otherwise interfered with for any reason. Children shall have access to all materials necessary for writing and sending letters and, when necessary, shall receive assistance.

d. A child has the right to consult freely and privately with legal counsel, as well as, the right to employ legal counsel of his/her choosing.

e. A child has the right to communicate freely and privately with state and local regulatory officials.

4. Safeguards

a. A child has the right to be free from mental, emotional, and physical abuse and neglect and be free from chemical or mechanical restraints. Any use of personal restraints shall be reported to the child's legal guardians(s).

b. A child has the right to live within the least restrictive environment possible in order to retain their individuality and personal freedom.

c. Children shall not be subjected to corporal punishment or cruel, severe, unusual, degrading or unnecessary punishment.

5. Civil Rights

a. A child's civil rights shall not be abridged or abrogated solely as a result of placement in the provider's program.

b. A child shall not be denied admission, segregated into programs or otherwise subjected to discrimination on the basis of race, color, religion, national origin, sexual orientation, physical limitations, political beliefs, or any other non-merit factor. Facilities must comply with the requirements of the Americans with Disabilities Act, 42 U.S.C. §12101 et seq. (ADA).

6. Participation in Program Development.

a. A child has the right to be treated with dignity in the delivery of services.

b. A child has the right to receive preventive, routine and emergency health care according to individual need and that will promote his or her growth and development.

c. A child has the right to be involved, as appropriate to age, development and ability, in assessment and service planning.

d. A child has the right to consult with clergy and participate in religious services in accordance with his/her faith. The provider shall have a written policy of its religious orientation, particular religious practices that are observed and any religious restrictions on admission. This description shall be provided to the child and the child's legal guardian(s). When appropriate, the provider shall determine the wishes of the legal guardian(s) with regard to religious observance and make every effort to ensure that these wishes are carried out. The provider shall, whenever possible, arrange transportation and encourage participation by those children who desire to participate in religious activities in the community.

F. Prohibited Practices

1. The provider shall have written policies and procedures regarding its discipline and behavior management program. The provider shall ensure its policy:

a. is maintained in writing and current;

b. is available to the child and the child's parent or custodian;

c. includes:

i. the goal and purpose of the provider's discipline and behavior management program;

ii. approved methods of discipline and behavior management; and,

iii. a list of persons authorized to administer discipline and behavior management methods to children in foster care; and

iv. the provider's method of monitoring and documenting implementation of the policy.

2. The provider shall maintain a list of prohibited practices that shall include the following:

a. use of a chemical or mechanical restraint;

b. corporal punishment such as slapping, spanking, paddling or belting;

c. marching, standing or kneeling rigidly in one spot;

d. any kind of physical discomfort except as required for medical, dental or first aid procedures necessary to preserve the resident's life or health;

e. denial or deprivation of sleep or nutrition except under a physician's order;

f. denial of access to bathroom facilities;

g. verbal abuse, ridicule or humiliation, shaming or sarcasm;

h. withholding of a meal, except under a physician's order;

i. requiring a resident to remain silent for a long period of time;

j. denial of shelter, warmth, clothing or bedding;

k. assignment of harsh physical work;

l. punishing a group of residents for actions committed by one or a selected few;

m. withholding family visits;

n. extensive withholding of emotional response;

o. denial of school services and denial of therapeutic services; and

p. other impingements on the basic rights of children for care, protection, safety, and security.

3. The child, where appropriate, and the child's legal guardian(s) shall receive a list of the prohibited practices. There shall be documentation of acknowledgement of receipt of the list of prohibited practices by the child and, where appropriate, the child's legal guardian(s) in the child's record.

G. Grievance Process

1. The provider shall have a written grievance policy and procedure for the child designed to allow them to make complaints without fear of retaliation. The child shall be informed of the advocacy services available.

a. The provider shall make every effort to ensure that all child(ren) are aware of and understand the grievance procedure.

b. The child's records shall contain a record of any grievances and their resolutions.

H. Quality Improvement

1. The provider shall have a written policy and procedure for maintaining a quality improvement program to include:

- a. systematic data collection and analysis of identified areas that require improvement;
- b. objective measures of performance;
- c. periodic review of resident records;
- d. quarterly review of incidents to include documentation of the date, time and identification of residents and staff involved in each incident; and
- e. implementation of plans of action to improve in identified areas.

2. Documentation related to the quality improvement program shall be maintained for at least two years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and ACT 64 of the 2010 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:828 (March 2011).

§7313. Foster Care Services

A. Provider Responsibilities

1. Type of Services

a. The provider may provide any or all of the following types of foster care services in a certified foster home:

- i. basic foster care services;
- ii. specialized foster care services;
- iii. therapeutic foster care services; and
- iv. respite care services.

2. Number of Children

a. The foster home shall have no more than eight dependents including foster children and their own children and shall care for a maximum of six foster children at any given time with the exception of a sibling group, who may remain together.

b. A maximum of two children under two years of age can be placed in the same foster home at the same time, with the exception of a sibling group, who may remain together.

3. Background Checks

a. The provider shall perform a state and national criminal background check on the applicant(s) and any member of the applicant's household in accordance with the R.S. 46:51.2 for any crime enumerated under R.S. 15:587.1 and Public Law 105-89.

b. An inquiry of the state central registry for members of the household 18 years of age and older shall be conducted. No person who is recorded on the state central registry with a valid (justified) finding of abuse or neglect of a child can reside in the home. The parent(s) and all other members of the household, 18 years of age or older, shall sign a release for a clearance with the State Central Registry. If the applicant(s) or any other adult living in the home of such applicant resided in another state within the proceeding five years, the provider shall request and obtain information from that state's child abuse and neglect registry.

4. Personnel Qualifications

a. Supervisor. The supervisor shall meet the following qualifications:

- i. a master's degree from an accredited school of social work;
- ii. two years experience in child placement;
- iii. in all instances, child placement staff shall include a person meeting the qualifications of a supervisor of placement services;

iv. a staff person shall be delegated supervisory authority and responsibility in the short-term absence of the supervisor of placement services for illness, vacation, jury or military duty, professional seminars and meetings or in short-term periods when the position is vacant; and

v. a person serving as acting supervisor shall meet the qualifications of supervisor of placement services. If there is no one on staff who meets the qualification, the agency may meet the minimum requirements for licensing by entering into an agreement with another CPA for supervision or by entering into a contractual agreement with a private practitioner who meets the qualifications and is a licensed clinical social worker.

b. Child Placement Worker. The Child Placement Worker (CPW) shall meet the following qualifications:

i. have a minimum of a bachelor's degree in social work or any bachelor's degree plus one year of social service experience;

ii. a child placement worker located in a branch office apart from the supervisor of placement services shall have a master's degree from an accredited school of social work;

iii. in providers where the child placement staff is comprised of one placement worker, this person shall meet the qualifications of the supervisor of placement services.

c. Child Placement Worker (CPW) Assistant. The CPW assistant shall:

- i. be at least 18 years of age;
- ii. have a high school diploma or equivalency;

and

iii. have one year of experience providing basic child welfare support services to children.

5. Personnel Job Duties

a. The supervisor shall be responsible for:

- i. supervising staff providing services in the provider program areas;
- ii. guides employees in the assessment of services or placement needs of children; the development of psychosocial assessment of case goals/objectives and/or case plans for children and their families; and the implementation of the case plan;
- iii. determines work assignments and periodically monitors workers' productivity and activity;
- iv. may serve as a consultant to other supervisors or employees;
- v. may design and deliver training curricula or on-the-job training opportunities;
- vi. gathers and analyzes data in order to design and implement recruitment campaigns to recruit potential adoptive and foster family resources to meet the placement needs of children in provider custody; and
- vii. reviews and approves foster home studies, certifications and placements.

b. The CPW shall be responsible for:

- i. assessing, developing, and executing a plan to achieve permanence for the child including return to the family, adoptions, transfer of custody, independent living, or other alternative plans;
- ii. providing services to a caseload of children removed from their homes by court order, voluntary surrender, or voluntary placement agreement and placed in a foster home or a more restrictive setting;

iii. overseeing the placement to ensure the child's well-being, assesses probability of return, and plan for the child's permanence;

iv. developing and implementing a recruitment plan for certifying perspective foster and adoptive families;

v. preparing and conducting extensive orientation and training for potential foster and adoptive homes;

vi. examining and evaluating information gathered about families, housing, and environment in relation to provider criteria and licensing regulation for certification of perspective adoptive and foster homes;

vii. complete home studies;

viii. upon completion of written home studies, recommend approval or denial of certification for perspective adoptive and foster homes based on a combined evaluation and assessment process;

ix. re-evaluating for continued annual re-certification for foster and adoptive homes. Develops and implements a corrective action plan to correct deficiencies; and

x. maintaining listing of all foster and adoptive homes in area and recommends appropriate resources to workers placing children.

c. The CPW assistant shall be responsible for:

i. assisting professional staff in providing services to the children;

ii. instructing children in the practical application of improved standards of housekeeping, shopping, personal hygiene, medical and childcare, and other necessary home management skills;

iii. lifting or assisting children into the transit with their personal belongings and any medically needed equipment such as a wheel chair, an oxygen tank, a walker, etc.;

iv. observing and reporting children's behavior to professional staff to aid in the assessment and treatment plan of the case;

v. monitoring family visitation between caretaker and child(ren) with parents, as required;

vi. preparing narrative reports and maintaining visitation log as required;

vii. scheduling and arranging child transportation for follow-up visits;

viii. effectively communicating with children to defuse potentially dangerous situations such as physical/verbal confrontations between children and/or towards provider staff;

ix. completing various forms and reports; and

x. may be responsible for vehicle maintenance and documentation of such.

6. Child's Record

a. The provider shall maintain a record for each child placed, which contain (if applicable):

i. identifying information including the name, address, sex, race, nationality, birth date and birth place of the child;

ii. the provider's written authorization to care for the child;

iii. a copy of the home study;

iv. the current name, address, telephone number and marital status of the parent(s) and/or custodian(s) of the child;

v. the name, address, and telephone number of siblings if placed elsewhere and significant relatives or others considered in the case plan;

vi. copies of legal documents verifying status of the child including birth certificate, court orders or dispositions, voluntary surrenders for adoption, final decree of adoption;

vii. the medical history, circumstances health record, and available psychological and psychiatric reports or specialist evaluations;

viii. the social assessment and background of the parent(s) and family;

ix. summary which reflects the dates of contact with the child, initial assessment and case plan, all subsequent assessments and case plans, content of the supervisory visits;

x. a record of the provider's contacts with the child's family, including copies of correspondence with other interested persons and organizations;

xi. home study summary and plan indicating the circumstances leading to the decision to place the child, the provider's involvement with the parent(s), including services offered, delivered, or rejected;

xii. educational information records, evaluations and reports;

xiii. summary of case reviews which reflect the contacts with and the status of all family members in relation to the case plan as well as the achievements or changes in the goals;

xiv. summary of any administrative or outside service reviews on the progress of each child toward goal determination;

xv. summary of the child's contacts with family members which reflect the quality of the relationships as well as the way the child is coping with them;

xvi. a record of the child's placements with names of care-givers, addresses, begin and end dates of care. Signed placement agreements shall be filed in the record;

xvii. chronological record, noting significant events and contacts with the child and documentation of supervisory visits;

xviii. documentation of compliance with the case plan;

xix. the basis for selection of the home or residential provider for the specific child; and

xx. summary of case disposition, date of discharge, name, address of person(s) or provider to whom child was discharged and the reason for discharge.

7. Parent(s) Record

a. The provider shall maintain a record for each child placed, which contain (if applicable):

i. identifying information for each parent including name, address, telephone number, birth date, race, religion, the family composition, and interested others;

ii. effort to maintain child in own home;

iii. reason for placement;

iv. the social history;

v. the medical history, including any psychological or psychiatric reports and specialists reports;

vi. strengths and needs of the family and the services required;

vii. worker's assessment, home study, initial and subsequent case plans, including conditions for return of child;

viii. verification of custody of child;

ix. signed agreements between the provider and parent(s) or custodian (for voluntary placements);

x. chronological record, noting significant events and dates of contact with parent(s) and progress toward goals;

xi. written summary of visits between parent(s) and child;

xii. case review reports;

xiii. discharge summary.

xiv. the application;

xv. references from at least three sources;

xvi. criminal record check reports;

xvii. a summary of contacts from application until placement;

xviii. correspondence;

xix. copies of legal documents verifying marital status;

xx. summary containing the placement decision, replacement and post-placement contacts with the family and the child adopted;

xxi. a copy of the information given to the adoptive parent(s) concerning the child(ren) placed or to be placed with them; and

xxii. disposition summary for certified homes at decertification stating the reason.

8. Staffing Requirements

a. Supervisors of placement services shall be responsible for not more than six full time child placement workers and/or aides and volunteers.

b. Child placement worker case loads shall be limited to allow for all required contracts with the parent(s), children, foster families, and collateral parties. The provider shall maintain a maximum average case load size of 25 active placement cases.

9. Interstate Compact on the Placement of Children

a. The provider accepting any child who resides in another state shall show proof of compliance with the terms of the Interstate Compact on Juveniles, the Interstate Compact on the Placement of Children and the Interstate Compact on Mental Health. Proof of compliance shall include clearance letters from the compact officers of each state involved.

b. The provider shall send written notice to the administrator of the Interstate Compact on the Placement of Children on forms provided by the department before placing into or receiving a child from another state. No interstate placement shall occur without prior approval from the compact administrator from the receiving state.

c. The provider shall conduct or accept only a state approved home study for interstate foster home placements.

d. The provider shall conduct or accept only a state approved home study for interstate adoptive placements.

e. If a child makes a brief visit out of state, not accompanied by provider personnel, the provider shall obtain prior consent from designated department staff.

f. A provider shall comply with subsection (a) of this section if a child placed with the provider visits or receives respite care in another state for a period to exceed:

i. 30 days; or

ii. the child's school vacation period.

B. Certification of a Foster Home

1. Recruitment of an Applicant

a. The provider's staff shall recruit a prospective foster home and approve the applicant for participation as a foster home if the provider meets all of the required standards.

b. The provider shall have a written plan for ongoing recruitment of foster homes which includes the methods of recruitment, resources to be used, time-related goals for applicant recruitment, designated staff, and funding to implement the plan.

2. Home Study

a. The provider shall complete a home study on a foster home applicant(s) prior to placement of a child in the home.

b. The applicant(s) shall be allowed the opportunity to review a copy of their home study whether the application was approved or denied for certification. Any quotations from reference letters or other third party letters or telephone reports from agencies or professionals shall be deleted. Identifying information regarding the child's biological family shall be removed, unless a release of information is obtained from the birth parent(s).

c. With written permission of the applicant(s), the provider may forward a copy of the home study to another child placement provider for placement consideration or re-application to another child placing provider.

d. The home study shall include verification of the following:

i. marital status;

(a). verification the applicant is legally married or single;

ii. citizenship/age requirement; and

(a). proof of the applicant's:

(i). identity, such as a federally or state-issued photo identification card;

(ii). United States citizenship, such as a birth certificate, or legal alien status, such as a permanent child card, as described in 8 U.S.C. 1151 as evidence;

(iii). that they meet the following age requirements unless otherwise specified:

[a]. at least 21 years of age; and

[b]. less than 65 years of age;

(iv). if the foster parent(s) is a relative, the foster parent(s) shall be considered if:

[a]. between 18 and 21 years of age or over 65 years of age; and

[b]. is able to meet the needs of the child to be placed in the applicant's home;

iii. income;

(a). verification that the applicant has sufficient income, separate from foster care reimbursement, to meet the needs of the family;

iv. references;

(a). three personal references who are not related to the applicant and one reference who is related to the applicant but does not live in the home;

v. health;

(a). a statement for each member of the applicant's household that shall be signed by a licensed

physician or licensed health care professional verifying that the individual:

(i). is free of a communicable or infectious disease; and

(ii). has no illness or condition that would present a health, to include past and present mental health, or safety risk to a child placed in the applicant's home;

(iii). is physically able to provide necessary care for a child;

e. The home study shall also include:

i. at least two home consultation visits and a third visit which may be a home or office visit; separate face to face interviews with each age appropriate member of the household and an interview with an adult child of the applicant, who does not live in the applicant's home, regarding the applicant's parenting history;

ii. discussion of motivation or origin of interest in foster care; the child(ren) requested in regard to the number, age, sex, characteristics; or acceptability in regard to health or developmental conditions or other special needs;

iii. history of any previous application for adoption. The provider shall document the attempt to obtain a copy of any previous home study from the responsible provider. If an applicant was approved to foster or adopt a child by another provider or the department and the applicant's home was closed, verification of the closure and a statement to indicate whether the closure was at the request of the applicant or the provider;

iv. background information and social information of applicant(s) and all members of the household to include but not limited to:

(a). personality in general and in relation to being an adoptive family;

(b). family background, customs, relationship patterns, formative experiences with adoption, and (if immigrants) early adjustment in the new country;

(c). marriage(s), marital or non-marital relationship(s), nature, quality, and agreement on respective roles, how are mutual needs met and how would a new child affect the relationship;

(d). children in the family and family interaction patterns and relationships, where/how would a new child fit in and affect family relationships;

(e). hobbies, interests, social contacts, contacts with extended family, integration into/involvement in community, how will these be affected by the addition of a new child;

(f). discussion of past and present mental and physical health of all applicant and family members;

(g). discussion of religious faith, affiliation, practices, attitudes towards religion, openness to religion of others and how parent(s) view the role of religion in rearing children;

(h). an assessment of the attitude of each member of the applicant's household extended family and significant others involved with the family toward the placement of a child into the home;

(i). disciplinary beliefs and practices;

(j). plan for child care if parent(s) work outside of the home; special provisions for meeting needs of specific special needs placement;

(k). attitude and capacity for handling a foster care disruption if that should be necessary; and

(l). if a business open to the public adjoins the applicant's household, consideration of potential negative impacts on the child and family, including:

(i). hours of operation;

(ii). type of business; and

(iii). clientele.

3. Training the Foster Home Parent(s)

a. The foster parent(s) shall participate in training provided or approved by the agency to develop and enhance their skills.

b. The provider shall develop and provide orientation and preparation to a prospective foster parent, to include the following:

i. provider program description with mission statement;

ii. information about the rights and responsibilities of the home; and

iii. background information about the foster child and the child's family;

iv. an example of an actual experience from a foster parent that has fostered a child;

v. information regarding:

(a). the stages of grief;

(b). identification of the behavior linked to each stage of grief;

(c). the long-term effect of separation and loss on a child;

(d). permanency planning for a child, including independent living services;

(e). the importance of attachment on a child's growth and development and how a child may maintain or develop a healthy attachment;

(f). family functioning, values, and expectations of a foster home;

(g). cultural competency;

(h). how a child enters care and experiences foster care, and the importance of achieving permanency; and

(i). identification of changes that may occur in the home if a placement occurs, to include:

(i). family adjustment and disruption;

(ii). identity issues;

(iii). discipline issues and child behavior management; and

(iv). specific requirements and responsibilities of a foster parent.

c. The foster parent(s) shall annually participate in a minimum of 15 hours of approved training. The hours may be shared among the adult members of the family, however, each adult shall receive a minimum of five hours; and shall maintain a record of all preparation and training completed.

4. Parent(s) Requirements

a. General Requirements

i. Foster parent(s) shall:

(a). only accept children for family foster care only from a licensed CPA or the state agency;

(b). not care for unrelated adults on a commercial basis nor accept children into the home for day care at the same time they are certified to provide family foster care;

- (c). not accept children beyond the maximum capacity allowable for a family foster home;
- (d). permit the provider to visit the home;
- (e). share with the provider information about the child placed by the provider;
- (f). notify the provider prior to:
 - (i). leaving the state with a child placed by the provider for more than two nights; or
 - (ii). allowing a child placed by the provider to be absent from the foster home for more than three days;
- (g). report, if applicable, within two business days to the provider if there is a:
 - (i). change in address;
 - (ii). change in the number of people living in the home;
 - (iii). insignificant change in circumstance in the foster home; or
 - (iv). failure of the foster child or foster parent to comply with the supervision plan;
- (h). cooperate with the provider regarding the following when the staff arranges between a child and the child's birth family:
 - (i). visits;
 - (ii). telephone calls;
 - (iii). mail; or
 - (iv). email;
- (i). surrender a child or children to the authorized representative of the provider or the state provider, which has custody of the child, upon request;
- (j). keep confidential all personal or protected health information as shared by the department or provider according to state law and 45 C.F.R. Parts 160 and 164, concerning a child placed in a home or the child's birth family;
- (k). support an assessment of the service needs, including respite care, and the development of a service plan of a child placed by the provider;
- (l). participate in a case planning conference concerning a child placed by the provider;
- (m). cooperate with the support and implementation of the permanency goal established for a child placed by the provider;
- (n). provide medical care to a child as needed, including:
 - (i). administration of medication to the child and daily documentation of the administration; and
 - (ii). annual physicals and examinations for the child;
- (o). comply with general supervision and direction of the provider concerning the care of the child placed by the provider.
- (p). be knowledgeable of disciplinary measures and shall:
 - (i). recognize, encourage, and regard acceptable behavior;
 - (ii). teach by example and use fair and consistent rules with logical consequences;
 - (iii). use methods of discipline that are relevant to the behavior;
 - (iv). supervise with an attitude of understanding, firmness, and discipline;

- (v). give clear directions and provide guidance consistent with the child's level of understanding;
 - (vi). redirect the child by stating alternatives when behavior is unacceptable;
 - (vii). express themselves so the child understands that the child's feelings are acceptable but certain actions or behavior are not;
 - (viii). help the child learn what conduct is acceptable in various situations;
 - (ix). encourage the child to control the child's own behavior, cooperate with others and solve problems by talking things out;
 - (x). communicate with the child by showing an attitude of affection and concern; and
 - (xi). encourage the child to consider others' feelings.
- b. Exterior Environment Requirements
- i. The foster home shall be reasonably safe, in good repair and comparable in appearance and maintenance to other family homes in the community.
 - ii. The home and the exterior around the home shall be free from objects, materials and conditions which constitute a danger to the children served.
 - iii. The home shall have a safe outdoor play area which children may use either on the property or within a reasonable distance of the property. Any play equipment on the property shall be safe, well constructed and suitable for the children served.
 - iv. Any swimming and wading pools areas shall be locked and be made inaccessible to children except when supervised.
- c. Interior Environment Requirements
- i. Foster parent(s) shall have the necessary equipment for the safe preparation, storage, serving and clean up of meals.
 - ii. Foster parent(s) shall maintain all cooking and refrigeration equipment in working and sanitary condition.
 - iii. The home shall have a comfortable dining area furnished with sufficient furniture so that all members of the household can eat together.
 - iv. The home shall have sufficient living or family room space comfortably furnished and accessible to all members of the family.
 - v. Sleeping arrangements in a foster home shall be subject to the prior approval of the placing agency.
 - vi. Foster parent(s) shall permit no more than four children to a bedroom.
 - vii. The home shall have sufficient bedroom space to allow at least 75 square feet for individual occupant of a bedroom and an additional 55 square feet for each additional occupant.
 - viii. Providers receiving federal funds may not use standards related to income, age, education, family structure and size or ownership of housing which exclude groups of prospective parents on the basis of race, color, or national origin, where these standards are arbitrary or unnecessary or where less exclusionary standards are available.
 - ix. Foster parent(s) shall provide each child with his/her own bed and each infant with his/her own crib. The bed shall be no shorter than the child's height and no less than 30 inches wide. It shall have a clean, comfortable, non-toxic mattress with a water proof cover.

x. Foster parent(s) shall not permit children over the age of six years to share a bedroom with a person of the opposite sex.

xi. Children shall not share a bedroom with adults, except when the child needs close supervision due to illness or except at the discretion of the placing agency.

xii. Foster parent(s) shall provide a chest, dresser or other adequate storage space for a child's clothing and personal belongings in the child's bedroom and a designated space for hanging up clothes near the bedroom occupied by the child.

xiii. Bedrooms shall have windows which provide sufficient natural light and ventilation for the health of the children.

xiv. Foster parent(s) shall allow some scope in the decoration of sleeping areas for the personal tastes and expressions of the child.

xv. Foster parent(s) shall provide bed linen and sufficient blankets and pillows for all children.

xvi. The family foster home shall have a minimum of one flush toilet; one wash basin with running water, and one bath or shower with hot and cold water.

xvii. Foster parent(s) shall equip each bathroom with toilet paper, towels, soap and other items required for personal hygiene and grooming.

xviii. Allow each child sufficient privacy with the exclusion of security/video cameras from areas such as the child's bedroom and/or bathroom.

d. Safety Requirements

i. The home shall be well heated and well ventilated.

ii. The foster parent(s) shall:

(a). provide screens for windows and doors used for outside ventilation;

(b). have a telephone in the home;

(c). ensure the safe storage of drugs, poisons or other harmful materials;

(d). store alcoholic beverage out of reach of small children;

(e). take measures to keep the home and premises free of rodents and insects;

(f). restrict children's access to potentially dangerous animals. Pets shall have current immunizations;

(g). store unloaded firearms and ammunition in separate locked places, inaccessible to children; and

(h). have household first aid supplies for treating minor cuts, burns and other minor injuries.

e. Fire Safety Requirements

i. The home shall be free from fire hazards, such as faulty electric cords and appliances, or non-maintained fireplaces and chimneys.

ii. Foster parent(s) living in apartment buildings shall give evidence that the building has been approved for building and fire safety within the last two years.

iii. Family foster homes including mobile homes shall have two doors which provide unrestricted exits in case of fire.

iv. Foster parent(s) shall:

(a). equip the home with operating smoke alarms within 10 feet of each bedroom;

(b). place a portable chemical fire extinguisher in the cooking area of the home;

(c). establish an emergency evacuation plan and shall practice it at least quarterly with the children to make sure all children understand the procedures;

(d). store combustible items away from sources of heat;

(e). shield all home heating units and other hot surfaces against accidental contact; and

(f). maintain safe conditions with properly installed, maintained and operated solid fuel heating stoves, systems, and fireplaces.

f. Sanitation and Health Requirements

i. Foster parent(s) shall keep the home clean and free of hazards to the health and physical well being of the family.

ii. The home shall have a continuous supply of clean drinking water. If the water is not from a city water supply, the foster parent(s) shall have the water tested and approved by the local health authority.

iii. The milk served to children shall either be Grade A and pasteurized or from an approved source.

iv. All plumbing in the home shall be in working order.

v. The home shall have an adequate supply of hot water for bathing and dishwashing. Hot water accessible to children shall not exceed 120 degrees Fahrenheit at the outlet.

g. Daily Living Services Requirements

i. Provide structure and daily activities designed to promote the individual, social, intellectual, spiritual, and emotional development of the child(ren) in their home.

ii. Assist the foster child(ren) to develop skills and to perform tasks which will promote independence and the ability to care for themselves.

iii. Cooperate with the provider to help the foster child maintain an awareness of his past, a record of the present and a plan for the future.

iv. Ask foster children to assume work responsibilities reasonable for their age and ability and commensurate with those expected of their own children.

v. As appropriate to the child's age and abilities, make every effort to teach good habits of money management, budgeting and shopping.

vi. Through careful daily monitoring, make every effort to teach a child good habits of personal hygiene and grooming appropriate to the child's sex, age and culture.

h. Food and Nutrition Requirements

i. Provide at least three nutritionally balanced meals daily according to the child's service plan.

ii. Provide for any special dietary needs of the foster child placed in their home on the advice of a licensed physician or in accordance with the child's case plan.

iii. If applicable, the dietary laws of the child's religion shall be observed in the food provided to the child.

i. Clothing Requirements

i. Provide each foster child with their own clean, well fitting, attractive, seasonal clothing appropriate to age, sex, individual needs and comparable to other household members and to the community standards.

ii. A child's clothing shall be his/her own, not required to be shared.

iii. A child's clothing shall go with the child when they leave.

iv. Only shoes in good repair and condition shall be provided for the child.

v. Allow the foster child(ren) to assist in the choosing of their own clothing whenever possible.

j. Personal Belongings Requirements

i. Allow the child to bring, possess and acquire personal belongings subject only to reasonable household rules.

ii. Personal belongings shall be sent with the child when he/she leaves the home.

iii. Ensure that each child is provided with clean towels, washcloths, his/her own toothbrush, his/her own comb or hair brush and other toiletry items suitable to the child's age and sex.

k. Money Requirements

i. Ensure that the child has the opportunity to have spending money in amounts appropriate to their age and abilities, either through a regular allowance, paid work, employment or money paid directly to the child from other sources.

ii. A child's money from any source shall be his/her own and may be subject to restrictions only according to his/her service plan.

iii. Children shall not be required to pay for any mandated foster home service, except according to their service plans.

iv. Children shall not be required to pay for necessary toiletry items.

v. As appropriate to the child's age and abilities, every effort shall be made to teach good habits of money management, budgeting and shopping.

l. Transportation

i. The foster parent(s) shall have access to:

- (a). reliable transportation;
- (b). school;
- (c). recreation;
- (d). medical care; and
- (e). community facilities.

ii. A foster parent(s) who drives shall:

- (a). possess a valid driver's license;
 - (b). possess proof of liability insurance; and
 - (c). abide by passenger restraint laws.
- (d). Support System

m. Foster parent(s) shall have or develop an adequate support system for supervising and providing care for the child(ren) on an ongoing basis to allow foster parent(s) opportunities for conducting personal business and for enjoying occasional breaks from the responsibility of caring for the child(ren).

n. Foster parent(s) shall provide one responsible adult (over age 18) for direct supervision of children or on call at all times.

o. Any person given the responsibility for a child on a regular basis must be identified to and approved by the placing agency.

5. Additional Requirements for Specialized Foster Care Services

a. A foster home providing specialized foster care services shall accommodate the needs of a child who is unable to live with the child's own family and who has one or both of the following:

i. an emotional or behavior problem which may include a Diagnostic and Statistical Manual (DSM) diagnosed mental illness, aggressive or destructive behavior, or multiple placement failures and whose needs prevent placement in a basic level foster home; and

ii. a medical or developmental problem or condition that requires more time consuming and specialized care with professional oversight based on the child's specific needs but whose needs prevent placement in a basic level foster home.

b. The foster parent(s) shall have the following educational requirements:

i. high school diploma or equivalent; and

ii. two years of experience in specialized fields or in parenting a child with special needs.

c. Specialized foster homes shall not exceed six dependents, including foster children. They shall care for no more than four specialized foster care children, unless an additional child is a sibling.

d. The provider shall provide a minimum of 30 hours of orientation and preparation for a prospective specialized foster care parent.

e. The child placement worker shall:

i. have the first face-to-face visit with the child and specialized foster care parent on the day of the child's placement or the following work day;

ii. have telephone contact twice a month with at least one of the specialized foster care parents of each child on the specialized child placement worker's caseload;

iii. visit the specialized foster care parent monthly in the foster home;

iv. on a monthly basis, visit the foster child face-to-face in the foster home without the foster parent being present;

v. carry a caseload of not more than 18 specialized foster care children, taking into account:

(a). required responsibilities other than the case management of a child in foster care;

(b). additional support, contact, and preparation needed by a specialized foster home, due to the extent of the needs of the child served; and

(c). the intensity of services provided to the child and the child's family;

vi. conduct a semi-annual case consultation, including the:

(a). foster home;

(b). child's placement worker;

(c). supervisor; and

(d). child and the child's family of origin, to the extent possible;

vii. identify the support needed by the foster family, including a plan for respite care; and

viii. document the semi-annual case consultation and revision to a child's service plan as determined by the case consultations.

f. The foster home parent(s) shall maintain certification in CPR and first aid.

g. The foster home parent(s) shall complete a minimum of 20 hours of annual training.

6. Additional Requirements for Therapeutic Foster Care Services

a. A foster home providing therapeutic foster care services shall accommodate the needs of a child who is unable to live with the child's own family and who has one or both of the following:

i. serious emotional or behavioral problems and meets one or more of the following criteria:

(a). Diagnostic and Statistical Manual (DSM) diagnosed mental illness;

(b). imminent release from a treatment provider;

(c). aggressive or destructive behavior;

(d). at risk of being placed in more restrictive settings, including institutionalization; or

(e). numerous placement failures;

(ii). a medical or developmental problem or condition so serious that it requires extremely time consuming, specialized care and supervision from a trained person, and ongoing, frequent professional oversight, all of which would be a significant burden to a caregiver. These may include, but are not limited to;

(a). a chronic and progressive illness or medical condition;

(b). the need for a special service or ongoing medical support; or

(c). a health condition stable enough to be in a home setting only with monitoring by an attending:

(i). health professional;

(ii). registered nurse; or

(iii). licensed practical nurse.

b. Therapeutic foster homes shall not exceed four dependents, including foster children. They shall care for no more than two therapeutic foster care children, unless an additional child is a sibling.

c. The foster parent(s) shall have the following educational requirements:

i. high school diploma or equivalent; and

ii. two years of college or formal education in human services, child development or nursing and two years work experience in specialized field; or

iii. four years of experience in specialized fields or in parenting a child with special needs.

d. The provider shall provide a minimum of 36 hours of orientation and preparation for a prospective therapeutic foster care parent.

e. The CPW shall:

i. have the first face-to-face visit with a child and therapeutic foster care parent on the day of the child's placement or the following work day;

ii. have another face-to-face visit with the therapeutic foster parent or child within 10 calendar days of the child's placement;

iii. have telephone contact, on a weekly basis with at least one of the specialized foster care parents of each child on the specialized child placement worker's caseload;

iv. visit a therapeutic foster care parent a minimum of two times a month with at least one visit being in the foster home;

v. visit the foster child face-to-face in the foster home without the foster parent being present a minimum of two times a month with at least one visit in the therapeutic foster care home and one visit outside the foster home;

vi. carry a caseload of not more than 12 therapeutic foster care children, taking into account:

(a). required responsibilities other than the case management of a child in foster care;

(b). additional support, contact, and preparation needed by a therapeutic foster care home, due to the extent of the needs of the child served; and

(c). the intensity of services provided to the child and the child's family;

vii. conduct a quarterly case consultation, including the:

(a). foster home;

(b). child's CPW;

(c). supervisor; and

(d). child and the child's family of origin, to the extent possible;

viii. identify the support needed by the foster family, including a plan for respite care; and

ix. recommend and prepare an aftercare plan for a child, prior to discharge from therapeutic foster care, to ensure a successful transition; and

x. document a quarterly case consultation and revision to a child's service plan as determined by the case consultations.

f. The foster home parent(s) shall maintain certification in CPR and first aid.

g. The foster home parent(s) shall complete a minimum of 24 hours of annual training.

h. If the child is medically-fragile, training on how to care for the specific needs of the child shall be conducted by a licensed health care professional.

i. If the child is medically-fragile, the foster home must be located within a:

i. one hour drive of a medical hospital with an emergency room; and

ii. thirty minute drive of a local medical facility.

7. Requirements for Respite Services

a. The provider shall develop written policies and procedures to address the respite care needs of a child or a foster parent.

b. Respite care shall not be used as a means of placement for a child.

c. A respite care provider shall:

i. be a certified foster home;

ii. receive from the provider or foster parent, preparation for placement of a child, including:

(a). pertinent information regarding the child's history; and

(b). information regarding the service plan of the child;

(c). provide adequate supervision in accordance with the child's service plan; and

(d). give relief to a foster parent caring for a child or provide for an adjustment period for a child.

8. Denial of a Foster Home Request

a. The applicant shall be notified, in writing within 30 days, if the request to become a foster home parent is not recommended if the applicant is unwilling to withdraw the request to become a foster home parent after receiving a recommendation to withdraw.

b. The provider shall enter a dispositional summary in the applicant(s) case record clearly indicating the reason for denial of the application for certification, the manner in

which the decision was presented to the family and whether or not they agreed with the decision.

c. If the applicant disagrees with the department's recommendation to not accept the applicant as a foster home, department staff shall review the request to become a foster home parent and issue a final written determination regarding the department's recommendation.

9. Annual Re-evaluation of the Foster Home

a. The provider shall conduct a personal interview in the home.

b. The provider shall assess the following:

- i. any change in the home;
- ii. the ability of the home to meet the needs of a child placed in the home; and
- iii. the home's continued compliance with the required standards.

10. Decertification of a Foster Home

a. A home shall be decertified if:

- i. it is determined that the family does not meet the general requirements for a foster home;
- ii. a situation exists that is not in the best interest of a child;
- iii. sexual abuse or exploitation by the parent or by another resident of the home is substantiated;
- iv. substantiated child abuse or neglect by a resident of the household;
- v. a serious physical or mental illness develops that may impair or preclude adequate care of the child by the parent; or
- vi. a child has not been placed in the home within the preceding two year period; and
- vii. the foster home parent requests a voluntary decertification.

(a). Upon voluntary request, the parent shall notify the provider, in writing, at least 30 days before the requested decertification date.

(b). The provider shall make adequate preparation and arrangements for the care, custody and control of any children in the home.

b. A home may be decertified according to the terms of the contract between the provider and the home.

c. The provider shall confirm, in a written notice to the home parent, the decision to decertify a home. The notice shall be delivered within 30 calendar days of contact with a foster home parent.

d. The written notice for decertification of a home shall include:

- i. notice that the provider shall not place a child in the home;
- ii. the reason why the home is being decertified; and
- iii. effective date.

11. Reapplication for Certification

a. Persons who desire to re-certify their foster home must re-apply. To reapply, a former foster home parent shall:

- i. attend an informational meeting; and
- ii. submit the:

(a). names of references; and

(b). authorization for all required background checks.

b. If the foster home has been decertified more than five years, a new home study must be is completed.

c. If the home has been decertified five years or less and at the time of decertification the home was in good standing and the re-assessments were up-to-date; the home can be re-certified with an addendum to the home study.

d. If the re-assessments were not in compliance, a new home study must be completed.

e. If the home was decertified during an investigation or needing a corrective action plan, a new home study must be completed.

f. A reapplying former foster home parent shall reenroll and complete the required preparation, as specified in the standards, unless the former foster home parent:

- i. has previously completed preparation; and
- ii. is considered a placement resource for children.

C. Child Placement

1. Admission

a. The provider shall:

- i. place a child only in an approved foster home; and
- ii. keep a child who has been committed to the Department of Corrections, Office of Juvenile Justice for the commission of a sex crime in a separate foster home from a child committed to the department.

b. The provider shall select a foster home for a child based upon the individual needs of the child, including:

- i. the child's assessment;
- ii. any information concerning the child's needs in placement; and
- iii. measures to support the safety of the child.

c. Generally, the level at which children are placed should represent:

- i. the level of supervision to be provided;
- ii. the level of support services to be provided or available;
- iii. the level of staff training required; and
- iv. the level of restrictiveness of the placement to the child.

d. The child shall participate in the process and in the decision that placement is appropriate, to the extent that the child's age, maturity, adjustment, family relationships, and the circumstance necessitating placement justify the child's participation.

e. The provider shall document the placement in the foster home file.

2. The provider shall have a written agreement with the foster home stating the:

a. responsibilities of the provider and the foster parent(s); and

b. terms of each placement which include, but not limited to the following:

i. the child is being placed with the foster parent(s) temporarily;

ii. the family agrees to work in a partnership with the agency to provide foster care services to children in state custody;

iii. the foster parent(s) agrees to keep all personal information about the child or the child's family confidential and not share with reporters, relatives, television (media), or any organization;

iv. the foster parent(s) meets the certification requirements for foster care;

v. the foster parent(s) will be reimbursed each month by the agency a daily board rate;

vi. the foster parent(s) agrees to cooperate with the agency/provider in making a planned move for the child if replacement should be necessary, except in emergency circumstances;

vii. the foster parent(s) will report to the agency(provider) any changes in their circumstances that have an effect on the child or the foster care placement;

viii. the foster parent(s) will not take the child out-of-state or authorize any special medical care or treatment for the child without the consent of the agency(provider); and

ix. the agency (provider) will provide supportive services to the foster parent(s) to promote a healthy parent-child adjustment and bonding.

3. Service Plan

a. The provider shall:

i. within 30 days of a child's placement, develop:

(a) a service plan based upon the individual needs of the child and, if appropriate, the child's family, which addresses the:

(i) visitation, health, and educational needs of the child;

(ii) child's permanency goals and related objectives;

(iii) methods for accomplishing each goal and objective; and

(iv) designation of an individual or individuals responsible for completion of each goal and objective; and

b. review a child's service plan on a semi-annual basis or more frequently as the child's needs or circumstances dictate; and

c. reassess and document semi-annually, in the child's service plan, placement and permanency goals, including independent living services, if indicated.

4. Supervision of the Child

a. The provider shall establish policies and procedures for supervision of a foster home by a worker other than the child placement worker assigned to the foster home to:

i. include:

(a) frequency of an in-home visit with the foster parent;

(b) means of supervision;

(c) methods of supervision; and

(d) personnel conducting the supervision;

ii. ensure a foster child's placement stability and safety; and

iii. be individualized, as needed, for the child or the foster home.

b. The provider shall conduct face-to-face visits with the child as often as necessary to carry out the case plan, but not less than two visits during the first month of care and monthly visits thereafter and document in the case record.

c. The provider shall identify and make available necessary supports to a foster home, including:

i. a plan for respite care; and

ii. 24 hour crisis intervention.

d. The provider shall provide information to a foster parent regarding the behavior and development of the child placed by the provider.

e. The provider shall inform the foster parent of:

i. inappropriate sexual acts or sexual behavior of the child as specifically known to the provider; and

ii. any behaviors of the child that indicate a safety risk for the placement.

f. The provider shall document each effort to:

i. protect the legal rights of the family and the child; and

ii. maintain the bond between the child and the child's family, in accordance with the child's permanency plan.

g. The provider shall assure that the child shall have, for the child's exclusive use, clothing comparable in quality and variety to that worn by other children with whom the child may associate;

h. The provider shall be responsible for monitoring the child's school progress and attendance; and

i. The provider shall secure psychological and psychiatric services, vocational counseling, or other services if indicated by the child's needs.

5. Discharge from Care

a. The provider shall discharge the child from care only to the person, persons or agency having legal custody of him or on written authorization of these or the court.

b. The provider shall complete a discharge summary, to be put in the child's records, which should include:

i. the name and address of the person, persons, or agency to whom the child was discharged;

ii. the reason for discharge;

iii. the date of discharge;

iv. the date of entrance;

v. case plan goals achieved while in care;

vi. follow-up recommendations; and

vii. person or agency responsible.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and ACT 64 of the 2010 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:833 (March 2011).

§7315. Adoption Services

A. Provider Requirements

1. General Requirements

a. The provider shall assure that all expectant parent(s) considering adoption as a permanent plan are advised of the legal statutes relative to their particular situation. The provider should encourage the parent(s) to seek independent legal counsel if so desired.

b. The provider shall avoid the use of coercion in securing surrenders from parent(s). A surrender shall not be executed any earlier than the third day after the birth or placement of the child.

c. The provider shall advise the parent(s) that a valid surrender for adoption to a child placing provider is final and irrevocable and makes the provider legally responsible for selecting the most appropriate permanent placement for the child. Any previous placement agreements or understandings between the provider and the parent(s) are considered preferences which are not legally binding in the

absence of a court order and secondary to the child's right to a timely permanent placement.

d. The provider shall not bring pressure on parent(s) to resume parental responsibility after acceptance of the surrender. Where the child is not in a permanent placement and the parent(s) wish to resume parental responsibility, the provider may consider adoptive placement with the parent(s).

e. The provider shall discuss the potential children available for adoption with the prospective adoptive family in compliance with state laws and provider policies on confidentiality and ethical practices. The provider shall have at least one up-to-date appropriate state or Louisiana Adoption Resource Exchange Photo listing of children to show families.

f. The provider shall inform the prospective adoptive parent(s) of the Louisiana Adoption Resource Exchange, a resource within the department for assisting agencies in linking the waiting child(ren) available for adoption with the waiting prospective adoptive parent(s). If the prospective adoptive parent(s) are interested, the provider shall assist them with registration forms provided by the department.

g. The provider shall advise the adoptive parents of the current provisions of their appropriate state or the Louisiana Voluntary Registry within the department to facilitate reunions between adult adoptees and birth family members.

2. Background Checks

a. The provider shall perform a state and national criminal background check on the applicant(s) and any member of the applicant's household in accordance with the R.S. 46:51.2 for any crime enumerated under R.S. 15:587.1 and Public Law 105-89.

b. An inquiry of the State Central Registry for members of the household 18 years of age and older shall be conducted. No person who is recorded on the State Central Registry with a valid (justified) finding of abuse or neglect of a child can reside in the home. The parent(s) and all other members of the household, 18 years of age or older, shall sign a release for a clearance with the State Central Registry. If the applicant(s) or any other adult living in the home of such applicant resided in another state within the proceeding five years, the provider shall request and obtain information from that state's child abuse and neglect registry.

3. Interstate Placements

a. The provider shall send written notice to the administrator of the Interstate Compact for the placement of children on forms provided by the authorized agency before placing into or receiving a child from another state. No interstate placement shall occur without prior approval from the compact administrator from the receiving state.

4. Intercountry Adoptions

a. Definitions

Birth Certificate—the child's official birth certificate and, if the certificate is not in English, a certified translation of the certificate.

Child—a person under seventeen years of age and not emancipated by marriage.

Foreign Orphan—a foreign-born child who is under the age of 16 at the time a visa petition is filed on his behalf and whose parents have both died or disappeared, or

abandoned or deserted him, or who has become separated or lost from both parents; whose sole surviving parent is incapable of providing for the child's care and has in writing irrevocably released the child for emigration and adoption; or who is a child born outside of marriage whose father acknowledges paternity and signs a relinquishment along with the mother.

b. Persons who may petition for inter-country adoption:

i. A United States citizen and spouse jointly or an unmarried United States citizen at least twenty-five years of age may petition for inter-country adoption of a foreign orphan. At least one petitioner shall be a domiciliary of Louisiana. When one joint petitioner dies after the petition has been filed, the adoption proceedings may continue as though the survivor was a single original petitioner.

c. Placement Authority. No foreign orphan who is the subject of an inter-country adoption shall be placed in the home of the prospective adoptive parents prior to their obtaining a certification for adoption.

d. Birth Certificate Requirement

i. Prior to the initiation of any adoption, the petitioners shall obtain a certified copy of the child's birth certificate, and, if the certificate is not in English, a certified translation of the certificate, which shall be attached to the petition for adoption.

ii. If a certified copy of the birth certificate and certified translation are not available, the court may make findings on the date, place of birth, and parentage of the adopted person in accordance with the provisions of R.S. 40:79(C)(2).

e. Record of Adoption Decree

i. A person born in a foreign country who is adopted in the state of Louisiana, but who is not a United States citizen, or who is a naturalized United States citizen, and a person born in a foreign country and adopted outside the United States by adoptive parents who are residents of the state of Louisiana at the time of the adoption, may obtain a new birth certificate according to the following conditions, limitations, and procedures:

(a). where a certified copy of the original foreign birth certificate of the adopted person, and, if the certificate is not in English, a certified verbatim translation of the certificate are available, the state registrar, upon receipt of the certificate translation and a certified copy of the order or decree of adoption, shall prepare a birth certificate in the new name of the adopted person and shall seal and file the foreign certificate and order or decree of adoption;

(b). where the certified copy of the original birth certificate of the adopted person and certified translation are not available, the court having jurisdiction of adoptions in the parish, upon evidence presented by the Department of Children and Family Services from information secured at the port of entry or upon evidence from other reliable sources, may make findings on the date, place of birth, and parentage of the adopted person. Upon receipt of a certified copy of such findings of the court, together with a certified copy of the order or decree of adoption, the state registrar shall prepare a birth certificate in the new name of the adopted person and shall seal and file the certified copy of the findings of the court and the certified copy of the order or decree of adoption;

(c). a birth certificate issued pursuant to the provisions of this Subsection shall show specifically the true or probable country, island, or continent of birth. Except as provided in the following Paragraph, the birth certificate shall be annotated with the provision "not proof of United States citizenship";

(d). where a certified copy of a certificate of naturalization is received by the state registrar together with the documents required by this Subsection, the date and number of the certificate of naturalization shall be included in the birth certificate, and the birth certificate shall be accepted by all state agencies as evidence of United States citizenship.

f. Types of Adoption. There are two types of inter-country adoptions of foreign orphans in Louisiana:

- i. recognition of a foreign decree of adoption;
- ii. adoption of a foreign orphan.

B. Adoption of a Foreign Orphan

1. Services in inter-country placements shall be provided by the state or licensed CPA authorized by the department to provide child placement in foster care and adoption services in Louisiana and shall comply with applicable federal and state laws.

2. The provider shall include in its statement of purpose a description of any inter-country placement services provided by the provider which may include but not be limited to:

- a. provision of intake services to help the family determine if it can parent a child of another country and culture;
- b. facilitation between the family and the foreign placement entity in direct adoptions or between the family and another child placing provider;
- c. link families with regulatory authorities in the United States and/or foreign country;
- d. provision of a home study for family to the U.S. Citizenship and Naturalization Service (USCIS) with accompanying:
 - i. placement recommendation;
 - ii. certification that family has met the pre-adoptive requirements in the child's proposed state of residence;
 - iii. signatures of the person completing the home study, the placement supervisor, and the provider administrator;
 - iv. verification that the provider is licensed or authorized to operate in Louisiana;
 - e. facilitate the provision of state-approved home studies for Louisiana families residing abroad through International Social Services to enable them to comply with the provisions of the Immigration and Naturalization Act;
 - f. selection and preparation for the child(ren) to be placed and/or family;
 - g. follow-up and supervision of the child's adoptive placement status;
 - h. assistance to the family with legal finalization of the adoption in Louisiana to include:
 - i. verification of documents attesting to the child's legal availability for adoption;
 - ii. court reports to the department in connection with the petition to finalize the adoption in a Louisiana court;

i. assistance to the family in obtaining a revised birth certificate for the child; and

j. post adoption services.

3. The provider shall conduct or accept only a home study conducted in accordance with these regulations for inter-country adoptive placements.

4. The provider working directly with foreign entities or with out-of-state licensed agencies to arrange for the placement of children shall establish working relationships and agreements in writing which address the service, legal, and financial responsibilities of the two parties.

5. The following conditions shall be met by the authorized adoption service or person in another country before a child can be placed for adoption in Louisiana:

a. the child shall be qualified for adoption and be in the permanent custody of an authorized provider, organization or person in the foreign country;

b. a duly constituted governmental unit or judicial court of the child's country has authorized the provider, organization, or person to arrange the adoption, who shall observe the laws or customs of the foreign country;

c. there shall be proper emigration and immigration permits; and

d. there shall be social and medical history of the child, to the extent available.

6. Providers in Louisiana and those authorized agencies placing foreign born children in to Louisiana shall be subject to the proceeding rules. In addition, such providers shall:

a. be responsible for making another adoptive plan if the placement disrupts prior to finalization of the adoption;

b. provide foster care until other appropriate legal steps are complete for the child's permanent care if the adoption disrupts;

c. arrange for needed medical care for a child if the adoptive parents decide not to keep the child;

d. advise adoptive parents of the necessity to have the child naturalized as a separate action from the adoption, if applicable;

7. A provider working in conjunction with another out-of-state CPA to arrange for international child placement shall ensure that the other provider is licensed in its state.

8. the provider shall ensure that all actions related to the international placement and adoption of children satisfy the laws and regulations of Louisiana and any other state in which it is authorized to operate, those of the foreign nation involved and the federal immigration laws.

9. The provider providing international placement services shall provide written information to families that at a minimum:

a. describes provider's services and programs;

b. defines the legal and financial responsibilities of the provider and the family;

c. defines its relationship with any other foreign or domestic child placing entity;

d. identifies direct and indirect costs associated with accomplishing the inter-country adoption;

10. the provider involved with assisting the family to arrange for the child's emigration, immigration or adoption shall:

a. ensure that all documents related to the child's legal status, emigration, social and medical status and immigration are valid and accurate;

b. ensure that documents required for the child's adoption or re-adoption in the United States comply with the laws and requirements for adoption in the state in which adoptive parents will file the adoption petition. When documents are not available or are in question the provider shall be responsible for helping the adoptive parents correct these circumstances;

c. ensure that families are aware of their responsibility to notify USCIS of changes in the child's residence after the child's adoption and prior to the child's naturalization;

11. the provider shall send written notice to the department on plans to place a Louisiana child in another country or when approval is given to USCIS for a Louisiana family to adopt a foreign born child;

12. the provider which provides inter-country adoption services to the family shall:

a. notify USCIS and the department when the child's legal adoption has been finalized so files can be updated;

b. notify the USCIS and the department when the child's legal adoption has not been finalized within six months of the time provided by state law;

c. notify the USCIS and the department when custody and/or residence of the child changes prior to finalization of the adoption.

13. the provider working with an out of state provider to place a foreign born child in Louisiana shall give written notice to the administrator of the Interstate Compact on the Placement of Children before placing a child into or receiving a child from another state. No placement shall occur without prior approval from the compact administrator of the receiving state. A child adopted through the court of jurisdiction in a foreign country or entering Louisiana directly from the foreign country for purposes of adoption are not subject to the Interstate Compact on the Placement of Children.

14. the provider shall comply with all applicable provisions of the Intercountry Adoption Act, Public Law 106-279.

C. Personnel Qualifications

1. Supervisor. The supervisor shall meet one of the following qualifications:

a. a master's degree from an accredited school of social work; and

b. two years experience in child placement;

c. in all instances, child placement staff shall include a person meeting the qualifications of a supervisor of placement services;

d. a staff person shall be delegated supervisory authority and responsibility in the short-term absence of the supervisor of placement services for illness, vacation, jury or military duty, professional seminars and meetings or in short-term periods when the position is vacant;

e. a person serving as acting supervisor shall meet the qualifications of supervisor of placement services. If there is no one on staff who meets the qualification, the agency may meet the minimum requirements for licensing by entering into an agreement with another CPA for

supervision or by entering into a contractual agreement with a private practitioner who meets the qualifications and is a Board Certified Social Worker.

2. Child Placement Worker. The child placement worker (CPW) shall meet the following qualifications:

a. have a minimum of a bachelor's degree in social work or any bachelor's degree plus one year of social service experience;

b. a child placement worker located in a branch office apart from the supervisor of placement services shall have a master's degree from an accredited school of social work;

c. in providers where the child placement staff is comprised of one placement worker, this person shall meet the qualifications of the supervisor of placement services.

3. Child Placement Worker (CPW) Assistant. The CPW assistant shall:

a. be at least 18 years of age;

b. have a high school diploma or equivalency; and

c. have one year of experience providing basic child welfare support services to children.

D. Personnel Job Duties

1. The supervisor shall be responsible for:

a. supervising staff providing services in the provider program areas;

b. guiding employees in the assessment of services or placement needs of children; the development of psychosocial assessment of case goals/objectives and/or case plans for children and their families; and the implementation of the case plan;

c. determining work assignments and periodically monitors workers' productivity and activity;

d. may serve as a consultant to other supervisors or employees;

e. may design and deliver training curricula or on-the-job training opportunities;

f. gathering and analyzing data in order to design and implement recruitment campaigns to recruit potential adoptive and foster family resources to meet the placement needs of children in provider custody;

g. reviewing and approving home studies, certifications and placements.

2. The CPW shall be responsible for:

a. assessing, developing, and executing a plan to achieve permanence for the child including return to the family, adoptions, transfer of custody, independent living, or other alternative plans;

b. providing services to a caseload of children removed from their homes by court order, voluntary surrender, or voluntary placement agreement and placed in a foster home or a more restrictive setting;

c. overseeing the placement to ensure the child's well-being;

d. probability of return, and plan for the child's permanence;

e. developing and implementing a recruitment plan for certifying perspective foster and adoptive families;

f. preparing and conducting extensive orientation and training for potential foster and adoptive homes;

g. examining and evaluating information gathered about families, housing, and environment in relation to

provider criteria and licensing regulation for certification of perspective adoptive and foster homes;

h. upon completion of written home studies, recommending approval or denial of certification for perspective adoptive and foster homes based on a combined evaluation and assessment process;

i. re-evaluating for continued annual re-certification for foster and adoptive homes;

j. develops and implements a corrective action plan to correct deficiencies.

k. maintaining listing of all foster and adoptive homes in area and recommends appropriate resources to workers placing children.

3. The CPW assistant shall be responsible for:

a. assisting professional staff in providing services to the children;

b. instructing children in the practical application of improved standards of housekeeping, shopping, personal hygiene, medical and childcare, and other necessary home management skills;

c. lifting or assisting children into the transit with their personal belongings and any medically needed equipment such as a wheel chair, an oxygen tank, a walker, etc.;

d. observing and reporting children's behavior to professional staff to aid in the assessment and treatment plan of the case;

e. monitoring family visitation between caretaker and child(ren) with parents, as required;

f. preparing narrative reports and maintaining visitation log as required;

g. scheduling and arranging child transportation for follow-up visits;

h. effectively communicating with children to defuse potentially dangerous situations such as physical/verbal confrontations between children and/or towards provider staff;

i. completing various forms and reports;

j. may be responsible for vehicle maintenance and documentation of such.

E.. Case Record

1. The provider shall maintain a record from the time of the application for services through the completed legal adoption and termination of provider services for:

a. a child accepted for care;

b. the child's family; and

c. an adoptive applicant.

2. The case record shall contain material on which the provider's decision may be based and shall include or preserve:

a. information and documents obtained as required by the court;

b. information about the child and the child's family;

c. a narrative or summary of the services provided with a copy of legal and other pertinent documents; and

d. information gathered during the intake process including the following:

i. a description of the situation that necessitated placement of the child away from the child's family, or surrender of parental rights;

ii. a certified copy of the order to surrender parental rights and committing the child to the provider for the purpose of adoption;

iii. verification of the child's birth record and the registration number;

iv. a copy of the child's medical record up to the time of adoption finalization;

v. a copy of the required home study with verification of all supporting documents;

vi. date of adoptive placement;

vii. a statement of the basis for the selection of this adoptive home for the child;

viii. a record of after-placement services with dates of:

(a). visits;

(b). contacts;

(c). observations;

(d). filing of petition;

(e). granting of judgments; and

(f). other significant court proceedings relative to the adoption;

ix. child's adoptive name; and

x. verification of preparation and orientation training.

3. The provider alone shall have full access to the adoptive parent(s) information.

4. Adoption case records shall be:

a. maintained indefinitely following final placement of a child; and

b. sealed and secured from unauthorized scrutiny in accordance with state law.

5. The provider shall submit microfilm/micro fished adoptive case records to the department, if:

a. the provider closes; and

b. no other operational governing entity exists.

F. Certification of an Adoptive Home

1. Recruitment of an Applicant

a. The provider's staff shall recruit a prospective adoptive home and approve the applicant for participation as an adoptive home if the provider meets all of the required standards.

b. The provider shall have a written plan for ongoing recruitment of adoptive homes which includes the methods of recruitment, resources to be used, time-related goals for applicant recruitment, designated staff, and funding to implement the plan. The provider shall engage in active recruitment of potential adoptive parents who reflect the racial and ethnic diversity of children needing placement.

c. The provider shall provide information to the prospective adoptive parent(s) about:

i. the adoption process;

ii. the provider's policies and practices, legal procedures and the approximate time the process will take;

iii. adoptive standards;

iv. types of children available;

v. the fees, structure, and the availability of a subsidy if applicable.

d. The provider shall provide services to adoptive applicants to assist them in making an informed decision about adoption. The home study should be an opportunity for applicant(s) and provider placement workers to participate in a joint, mutual assessment and evaluation of

their potential for meeting the needs of the children available for adoption.

2. Home Study

a. The provider shall complete a home study on adoptive home applicant(s) prior to placement of a child in the home.

b. The applicant(s) shall be allowed the opportunity to review a copy of their home study whether the application was approved or denied for certification. Any quotations from reference letters or other third party letters or telephone reports from agencies or professionals shall be deleted. Identifying information regarding the child's biological family shall be removed, unless a release of information is obtained from the birth parent(s).

c. With written permission of the applicant(s), the provider may forward a copy of the home study to another child placement provider for placement consideration or re-application to another child placing provider.

d. The home study shall include verification of the following:

i. marital status:

(a). verification the applicant is legally married or single;

ii. citizenship/age requirement:

(a). proof of the applicant's:

(i). identity, such as a federally or state-issued photo identification card;

(ii). United States citizenship, such as a birth certificate, or legal alien status, such as a permanent child card, as described in 8 U.S.C. 1151 as evidence;

(b). be at least 18 years of age;

iii. income:

(a). verification that the applicant has sufficient income, separate from foster care reimbursement, to meet the needs of the family;

iv. references:

(a). three personal references who are not related to the applicant and one reference who is related to the applicant but does not live in the home;

v. health:

(a). a statement for each member of the applicant's household that shall be signed by a licensed physician or licensed health care professional verifying that the individual:

(i). is free of a communicable or infectious disease;

(ii). has no illness or condition that would present a health, to include past and present mental health, or safety risk to a child placed in the applicant's home; and

(iii). is physical able to provide necessary care for a child;

e. The study shall also include:

i. at least two home consultation visits and a third visit which may be a home or office visit; separate face to face interviews with each age appropriate member of the household and an interview with an adult child of the applicant, who does not live in the applicant's home, regarding the applicant's parenting history;

ii. discussion of motivation or origin of interest in adoption care, the child(ren) requested in regard to the number, age, sex, characteristics or acceptable in regard to health or developmental conditions or other special needs;

iii. history of any previous application for adoption. The provider shall document the attempt to obtain a copy of any previous home study from the responsible provider. If an applicant was approved to foster or adopt a child by another provider or the department and the applicant's home was closed, verification of the closure and a statement to indicate whether the closure was at the request of the applicant or the provider;

iv. background information and social information of applicant(s) and all members of the household to include but not limited to:

(a). personality in general and in relation to being an adoptive family;

(b). family background, customs, relationship patterns, formative experiences with adoption, and (if immigrants) early adjustment in the new country;

(c). marriage(s), marital or non-marital relationship(s), nature, quality, and agreement on respective roles, how are mutual needs met and how would a new child affect the relationship;

(d). children in the family and family interaction patterns and relationships, where/how would a new child fit in and affect family relationships;

(e). hobbies, interests, social contacts, contacts with extended family, integration into/involvement in community, how will these be affected by the addition of a new child;

v. discussion of past and present mental and physical health of all applicants and family members.

vi. discussion of religious faith, affiliation, practices, attitudes towards religion, openness to religion of others and how parent(s) view the role of religion in rearing children;

vii. assessment of the attitude of each member of the applicant's household extended family and significant others involved with the family toward the placement of a child into the home;

viii. discussion of disciplinary beliefs and practices;

ix. plan for child care if parent(s) work outside of the home; special provisions for meeting needs of specific special needs placement;

x. attitude and capacity for handling an adoptive disruption if that should be necessary;

xi. attitudes and capacities to parent an adoptee, general attitude toward birth-parent(s) and the reason the child is in need of adoption; understanding and acceptance of the adoptee's separate background, heritage and identity, (if applicable) need for sibling and/or family contact; readiness and capacity to discuss adoption with the child and deal with adoption related issues that arise; adjustment of previously adopted children (if applicable);

xii. for individuals or couples wishing to adopt whose good health may not continue throughout the minority of the child or whose life expectancy may be shorter than the minority years of the child, there shall be established a plan for guardianship of the child in the event that incapacity or death precedes the child's reaching the age of majority;

xiii. if a business open to the public adjoins the applicant's household, consideration of potential negative impacts on the child and family, including:

(a). hours of operation;

- (b). type of business; and
- (c). clientele.

3. Training the Adoptive Parent(s)

a. The adoptive parent(s) shall participate in training provided or approved by the agency to develop and enhance their skills.

b. The provider shall develop and provide orientation and preparation to a prospective adoptive parent, to include the following:

- i. provider program description with mission statement;
- ii. information about the rights and responsibilities of the home; and
- iii. background information about the adoptive child and the child's family.
- iv. an example of an actual experience from an adoptive parent that has adopted a child;
- v. information regarding:
 - (a). the stages of grief;
 - (b). identification of the behavior linked to each stage of grief;
 - (c). the long-term effect of separation and loss on a child;
 - (d). permanency planning for a child, including independent living services;
 - (e). the importance of attachment on a child's growth and development and how a child may maintain or develop a healthy attachment;
 - (f). family functioning, values, and expectations of a foster home;
 - (g). cultural competency;
 - (h). how a child enters care and experiences adoptive care, and the importance of achieving permanency;
 - (i). identification of changes that may occur in the home if a placement occurs, to include:
 - (i). family adjustment and disruption;
 - (ii). identity issues; and
 - (iii). discipline issues and child behavior management; and
 - (j). specific requirements and responsibilities of an adoptive parent.

4. Parent(s) Requirements

a. General Requirements

i. Adoptive parent(s) shall:

- (a). accept children for adoption only from a licensed CPA or the state agency;
- (b). not care for unrelated adults on a commercial basis nor accept children into the home for day care at the same time they are certified to provide adoptive care;
- (c). not accept children beyond the maximum capacity allowable for an adoptive home;
- (d). permit the provider to visit the home;
- (e). share with the provider information about the child placed by the provider;
- (f). notify the provider prior to:
 - (i). leaving the state with a child placed by the provider for more than two nights; or
 - (ii). allowing a child placed by the provider to be absent from the adoptive home for more than three days;
- (g). report, if applicable, within two business days to the provider if there is a:

- (i). change in address;
- (ii). change in the number of people living in the home;
- (iii). significant change in circumstance in the home; or
- (iv). failure of the adoptive child or parent to comply with the supervision plan;
- (h). cooperate with the provider regarding the following when the staff arranges between a child and the child's birth family:
 - (i). visits;
 - (ii). telephone calls;
 - (iii). mail; or
 - (iv). email;
- (i). surrender a child or children to the authorized representative of the provider or the state provider, which has custody of the child, upon request;
- (j). keep confidential all personal or protected health information as shared by the department or provider according to state law and 45 C.F.R. Parts 160 and 164, concerning a child placed in a home or the child's birth family;
- (k). support an assessment of the service needs, including respite care, and the development of a service plan of a child placed by the provider;
- (l). participate in a case planning conference concerning a child placed by the provider;
- (m). cooperate with the support and implementation of the permanency goal established for a child placed by the provider;
- (n). provide medical care to a child as needed, including:
 - (i). administration of medication to the child and daily documentation of the administration; and
 - (ii). annual physicals and examinations for the child;
- (o). comply with general supervision and direction of the provider concerning the care of the child placed by the provider;
- (p). for individuals or couples wishing to adopt whose good health may not continue throughout the minority of the child or whose life expectancy may be shorter than the minority years of the child, there shall be established a plan for guardianship of the child in the event that incapacity of death precedes the child's reaching the age of majority;
- (q). be knowledgeable of disciplinary measures and shall:
 - (i). recognize, encourage, and regard acceptable behavior;
 - (ii). teach by example and use fair and consistent rules with logical consequences;
 - (iii). use methods of discipline that are relevant to the behavior;
 - (iv). supervise with an attitude of understanding, firmness, and discipline;
 - (v). give clear directions and provide guidance consistent with the child's level of understanding;
 - (vi). redirect the child by stating alternatives when behavior is unacceptable;

(vii). express themselves so the child understands that the child's feelings are acceptable but certain actions or behavior are not;

(viii). help the child learn what conduct is acceptable in various situations;

(ix). encourage the child to control the child's own behavior, cooperate with others and solve problems by talking things out;

(x). communicate with the child by showing an attitude of affection and concern; and

(xi). encourage the child to consider others' feelings.

b. Exterior Environment Requirements

i. The adoptive home shall be reasonably safe, in good repair and comparable in appearance and maintenance to other homes in the community.

ii. The home and the exterior around the home shall be free from objects, materials and conditions which constitute a danger to the children served.

iii. The home shall have a safe outdoor play area which children may use either on the property or within a reasonable distance of the property. Any play equipment on the property shall be safe, well constructed and suitable for the children served.

iv. Any swimming and wading pools areas shall be locked and be made inaccessible to children except when supervised.

c. Interior Environment Requirements

i. Adoptive parent(s) shall have the necessary equipment for the safe preparation, storage, serving and clean up of meals.

ii. Adoptive parent(s) shall maintain all cooking and refrigeration equipment in working and sanitary condition.

iii. The home shall have a comfortable dining area furnished with sufficient furniture so that all members of the household can eat together.

iv. The home shall have sufficient living or family room space comfortably furnished and accessible to all members of the family.

v. Sleeping arrangements in an adoptive home shall be subject to the prior approval of the placing agency.

vi. Adoptive parent(s) shall permit no more than four children to a bedroom.

vii. Providers receiving federal funds may not use standards related to income, age, education, family structure and size or ownership of housing which exclude groups of prospective parents on the basis of race, color, or national origin, where these standards are arbitrary or unnecessary or where less exclusionary standards are available.

viii. Adoptive parent(s) shall provide each child with his/her own bed and each infant with his/her own crib. The bed shall be no shorter than the child's height and no less than 30 inches wide. It shall have a clean, comfortable, non-toxic mattress with a water proof cover.

ix. Adoptive parent(s) shall not permit children over the age of six years to share a bedroom with a person of the opposite sex unless the children are inclusive of the same sibling group.

x. Children shall not share a bedroom with adults, except when the child needs close supervision due to illness or except at the discretion of the placing agency.

xi. Bedrooms shall have windows which provide sufficient natural light and ventilation for the health of the children.

xii. Adoptive parent(s) shall provide bed linen and sufficient blankets and pillows for all children.

xiii. The home shall have a minimum of one flush toilet; one wash basin with running water, and one bath or shower with hot and cold water.

xiv. Adoptive parent(s) shall equip each bathroom with toilet paper, towels, soap and other items required for personal hygiene and grooming.

xv. Adoptive parent(s) shall allow each child sufficient privacy with the exclusion of security/video cameras from areas such as the child's bedroom and/or bathroom.

d. Safety Requirements

i. The home shall be well heated and well ventilated.

ii. The adoptive parent(s) shall:

(a). provide screens for windows and doors used for outside ventilation;

(b). have a telephone in the home;

(c). ensure the safe storage of drugs, poisons or other harmful materials;

(d). store alcoholic beverage out of reach of small children;

(e). take measures to keep the home and premises free of rodents and insects.

(f). restrict children's access to potentially dangerous animals. Pets shall have current immunizations;

(g). store unloaded firearms and ammunition in separate locked places, inaccessible to children;

(h). have household first aid supplies for treating minor cuts, burns and other minor injuries.

e. Fire Safety Requirements

i. The home shall be free from fire hazards, such as faulty electric cords and appliances, or non-maintained fireplaces and chimneys.

ii. Adoptive parent(s) living in apartment buildings shall give evidence that the building has been approved for building and fire safety within the last two years.

iii. Adoptive homes including mobile homes shall have two doors which provide unrestricted exits in case of fire.

iv. The adoptive parent(s) shall:

(a). equip the home with operating smoke alarms within 10 feet of each bedroom.

(b). place a portable chemical fire extinguisher in the cooking area of the home.

(c). establish an emergency evacuation plan and shall practice it at least quarterly with the children, if applicable, to make sure all children understand the procedures.

(d). store combustible items away from sources of heat.

(e). shield all home heating units and other hot surfaces against accidental contact.

(f). maintain safe conditions with properly installed, maintained and operated solid fuel heating stoves, systems, and fireplaces.

f. Sanitation and Health Requirements

i. Adoptive parent(s) shall keep the home clean and free of hazards to the health and physical well being of the family.

ii. The home shall have a continuous supply of clean drinking water. If the water is not from a city water supply, the adoptive parent(s) shall have the water tested and approved by the local health authority.

iii. All plumbing in the home shall be in working order.

iv. The home shall have an adequate supply of hot water for bathing and dishwashing. Hot water accessible to children shall not exceed 120 degrees Fahrenheit at the outlet.

g. Daily Living Services Requirements. The adoptive parent(s) shall:

i. provide structure and daily activities designed to promote the individual, social, intellectual, spiritual, and emotional development of the child(ren) in their home;

ii. assist the adoptive child(ren) to develop skills and to perform tasks which will promote independence and the ability to care for themselves;

iii. help the adoptive child maintain an awareness of his past, a record of the present, and a plan for the future;

iv. ask adoptive children to assume work responsibilities reasonable for their age and ability and commensurate with those expected of their own children;

v. make every effort to teach good habits of money management, budgeting, and shopping as appropriate to the child's age and abilities;

vi. make every effort to teach a child good habits of personal hygiene and grooming appropriate to the child's sex, age and culture through careful daily monitoring;

h. Food and Nutrition Requirements. The adoptive parent(s) shall:

i. provide at least three nutritionally balanced meals daily according to the child's service plan;

ii. provide for any special dietary needs of the adoptive child placed in their home on the advice of a licensed physician or in accordance with the child's case plan.

i. Clothing Requirements. The adoptive parent(s) shall:

i. provide each adoptive child with their own clean, well fitting, attractive, seasonal clothing appropriate to age, sex, individual needs and comparable to other household members and to the community standards;

ii. a child's clothing shall be his/her own, not be required to be shared;

iii. a child's clothing shall go with the child when they leave;

iv. only shoes in good repair and condition shall be provided for the child;

v. allow the foster child(ren) to assist in the choosing of their own clothing whenever possible.

j. Support System

i. The adoptive parent(s) shall have or develop an adequate support system for supervising and providing care for the child(ren) on an ongoing basis to allow the parent(s) opportunities for conducting personal business and for enjoying occasional breaks from the responsibility of caring for the child(ren).

ii. The adoptive parent(s) shall provide one responsible adult (over age 18) for direct supervision of children or on call at all times.

iii. Any person given the responsibility for a child on a regular basis must be identified to and approved by the placing agency.

5. Updating Home Study

a. For families who have had an adoptive placement and who wish to apply for adoption of another child, the original home study may be updated.

b. If more than a year has passed since the family was certified for adoption, the provider shall complete an update prior to placement of a child in the home including updated background checks.

c. Applications for a second child shall not precede the finalization of the adoption of any unrelated children placed previously.

6. Denial of an Adoption Home Request

a. The applicant shall be notified, in writing, within 30 days if the request to become an adoptive home parent is not recommended for one of the following reasons:

i. the applicant is unwilling to withdraw the request to become an adoption parent after receiving a recommendation to withdraw; or

ii. the applicant desires to adopt, but is unwilling to adopt a child under the custodial control of the department.

b. The applicant shall enter a dispositional summary in the applicant(s) case record clearly indicating the reason for denial of the application for certification, the manner in which the decision was presented to the family and whether or not they agreed with the decision.

c. If the applicant disagrees with the department's recommendation to not accept the applicant as an adoption home, department staff shall review the request to become an adoption home parent and issue a final written determination regarding the department's recommendation.

7. Decertification of an Adoption Home.

a. A home shall be decertified if:

i. it is determined that the family does not meet the general requirements for an adoption home;

ii. a situation exists that is not in the best interest of a child;

iii. sexual abuse or exploitation by the parent or by another resident of the home is substantiated;

iv. substantiated child abuse or neglect by a resident of the household occurs that is serious in nature or warrants removal of a child;

v. a serious physical or mental illness develops that may impair or preclude adequate care of the child by the parent; or

vi. a child has not been placed in the home within the preceding two year period.

b. A home may be decertified according to the terms of the contract between the provider and the home.

c. If it is necessary to decertify a home, the reason shall be stated by the provider in a personal interview with the family.

d. The provider shall confirm, in a written notice to the home parent, the decision to decertify a home. The notice shall be delivered within 30 calendar days of the interview with a adoption home parent.

e. The written notice for decertification of a home shall include:

- i. notice that the provider shall not place a child in the home;
 - ii. the reason why the home is being decertified;
- and
- iii. effective date.

8. Reapplication for Certification

a. Persons who desire to re-certify their adoption home must re-apply. To reapply, a former adoption home parent shall:

- i. attend an informational meeting; and
- ii. submit the:
 - (a). names of references; and
 - (b). authorization for criminal records

background check.

b. If the adoption home hasn't been certified for more than five years, a new home study must be completed.

c. If the adoption home hasn't been certified for five years or less and at the time of the de-certification, the home was in good standing and the re-assessments were up-to-date, the home can be certified with an addendum and updated forms.

d. If the re-assessments were not in compliance, a home study must be completed.

e. If the home was de-certified during an investigation or needing a Corrective Action Plan, a home study must be completed.

G. Child Placement

1. Placement Authority

a. Prior to adoptive placement, the provider shall establish the availability of a child through the following procedures:

i. acceptance of legally executed voluntary surrender(s) from the parent(s);

ii. if the parent is surrendering the child, prior to the execution of the surrender, a surrendering parent shall participate in a minimum of two counseling sessions relative to the surrender;

iii. the provider shall execute an affidavit attesting that the surrendering parent attended a minimum of two sessions, and stating whether the surrendering parent appeared to understand the nature and consequences of his intended act. The affidavit of the counselor shall be attached to the act of surrender;

iv. if, in the opinion of the provider, there is any question concerning the parent's mental capacity to surrender, the basis for these concerns shall be stated in the affidavit. If indicated, the affidavit shall contain a specific recommendation for any further evaluation that may be needed to ascertain the parent's capacity.

v. if he is a major, any surrendering father of a child may waive the counseling. In this case, the provider shall execute an affidavit attesting to the father's waiver and that he appeared to understand the nature and consequences of his intended act. The affidavit shall be attached to the act of surrender.

vi. court order(s) of abandonment against the parent(s);

vii. court ordered termination of parental rights against the parent(s); or

viii. documentation of death of parent(s);

ix. any combination of the above.

b. A child's biological parent shall not be induced to terminate parental rights by a promise of financial aid or other consideration.

c. If the court finds the adoptive home to be unsuitable and refuses to grant a judgment, the provider shall remove the child from the home.

2. Assessment of the Child for Placement

a. A child shall not be placed for adoption until the adoptive home has been certified.

b. The child shall participate in the placement process and in the decision that placement is appropriate, to the extent that the child's age, maturity, adjustment, family relationships, and the circumstance necessitating placement justify the child's participation.

c. The provider shall obtain the following, if applicable:

i. a developmental history of the adoptive child to include:

- (a). birth and health history;
- (b). early development;
- (c). characteristic ways the child responds to people and situations;
- (d). any deviation from the range of normal development;
- (e). the experiences of the child prior to the decision to place the child for adoption;
- (f). maternal attitude during pregnancy and early infancy;

- (g). continuity of parental care and affection;
- (h). out-of-home placement history;
- (i). separation experiences; and
- (j). information about the mother, all fathers and family background:

(i). that may affect the child's normal development in order to determine the presence of a significant hereditary factor or pathology; and

(ii). including an illness of the biological mother or father, siblings, grandparents, great-grandparents, or cousins;

ii. a social history of the biological or legal parent, to include:

- (a). name;
- (b). date of birth;
- (c). nationality;
- (d). education;
- (e). religion or faith; and
- (f). occupation;
- (g). race;
- (h). height;
- (i). eye color;
- (j). weight;
- (k). complexion.

iii. Information obtained from observation of the child by a:

- (a). social services worker; or
- (b). foster parent; or
- (c). physician or other licensed health care professional;

(d). Information from the mother, if possible, identifying the biological father, or legal father, if different

from the biological father, for the purpose of determining the father's parental rights and hereditary rights. If either biological or legal parent is unavailable, unwilling, or unable to assist with the completion of necessary information, the provider shall document information, to the extent possible, from the existing case record.

3. Selection of a Home

a. The provider shall select an adoptive family for a child based on the assessment of the child's needs, as well as, an assessment of the prospective family's ability to meet those needs.

b. The provider may assess a child's racial, cultural ethnic and religious heritage and preserve them to the extent possible without jeopardizing the child's right to care and a permanent placement.

c. Selection of a family shall be based on three broad criteria:

- i. the best interest of the child is the primary consideration;
- ii. the existence of psychological parent-child bonds between the child available for adoption and significant adults in the child's life;
- iii. the ability of the family to meet the needs of the child.

d. The following factors regarding selection of a family shall be carefully considered:

i. placement of siblings as a family group is usually the preferred placement choice unless contraindicated by:

(a). assessment of the nature of sibling relationships;

(b). the likelihood that placement would be unduly delayed by waiting for a family who will accept all of the children in a sibling group;

(c). the existence of significant affectionate attachment between a child and foster parent(s) who wish to adopt only the member of the sibling group already placed in the home. The provider may agree to this when an assessment indicates that the child's psychological bond to the foster parent(s) is so strong that it is more important to the child than the sibling relationship(s). In this situation an assessment must be made of the foster parent(s) willingness to maintain sibling contact after finalization of the adoption;

ii. the prospective family's willingness and ability to provide for the medical, educational, and psychological services identified as being needed by the child;

iii. the family's ability to accept the child's background and his mental, physical and psychological imitations/strengths;

iv. the probable impact of such factors such as life style, expectations, culture and perception of family life on the ability of the family and the child to bond to each other.

e. Adoption of a child by foster parent(s) shall be considered when:

i. the foster parent(s) are interested in adopting the child;

ii. an assessment indicates that foster parent adoption is the most desirable permanent plan for the child;

iii. the child has lived with the foster family for a period of time and' the child and family have formed affectionate and healthy ties;

iv. removal and placement would be likely to cause lasting emotional damage to the child;

v. foster parent(s) meet certification standards for adoptive homes.

f. Adoption by a relative(s) shall be considered when:

i. the relative(s) is interested in adopting the child;

ii. an assessment indicates that this plan is in the best interest of the child;

iii. the child and relative(s) have formed affectionate and healthy ties;

iv. the relative(s) meets certification standards for adoptive homes.

g. Birthparent(s) may be considered for permanent placement of the child when:

i. the birthparent(s) is interested in adopting the child;

ii. an assessment indicates that this plan is in the best interest of the child;

iii. the child and birthparent(s) have the capacity to form an affectionate and healthy parent-child relationship;

iv. the parent(s) meets the certification standards for adoptive homes. Waivers may be considered for certification criteria where in the best interest of the child.

h. The provider having legal custody of the child may select an adoptive family for placement of the children if legal availability has not been established under the following conditions.

i. The provider has reasonable assurance that the child's availability will be established and legal procedures have been initiated or made a part of the case plan, pending implementation.

ii. Professional evaluation indicates that the establishment of a parent child bond at the earliest possible age is in the best interest of the child.

iii. The adoptive family meets the requirements for certification as a family foster home and has been certified as such prior to placement.

iv. The foster/adoptive family has been advised of the legal risks involved and is willing to enter into this case plan under a written family foster agreement stipulating the special provisions in §7313.U.3.

i. The provider shall not place a second child in a home for adoption until a previously placed child's adoption has been finalized except where the second child is a sibling to the first child and the placement is in the best interest of both children.

4. Placement Agreement with Adoptive Parent(s)

a. The provider shall have a signed agreement with each adoptive parent which includes the following.

i. The child's availability for adoption has been established.

ii. The child is being placed with the adoptive parent(s) for purposes of adoption.

iii. The adoptive parent(s) meets the certification requirements for adoption.

iv. The child remains in the custody of the provider until the adoption is finalized.

v. The family assumes financial responsibility for the child except in special needs placements approved by the

department for an adoption subsidy or in accordance with special provisions for financial responsibility as included in the agreement.

vi. The number of supervisory visits in the first six months of placement to assess the progress of the placement.

vii. The provider and family agree to finalize the adoption after six months barring unforeseen circumstance that warrant removal of the child or to extend the placement agreement for another time-limited period not to exceed 18 months in all.

viii. The family agrees to cooperate with the provider in making a planned move for the child if replacement should be necessary except in emergency circumstances.

ix. The family will not petition the court for adoption until the provider has given written consent.

x. The family will report to the provider any changes in their circumstances that have an effect on the child or the adoption.

xi. The family will not take the child out-of-state or authorize any special medical care or treatment for the child without the consent of the provider.

xii. The provider will provide supportive services to the family to promote a healthy parent-child adjustment and bonding.

5. Preparation of the Prospective Adoptive Parent

a. The provider shall prepare the prospective adoptive family for the placement of the particular child(ren).

b. Preparation shall include:

i. visitation with the child in accordance with the child's age, level of understanding and preparation needs;

ii. thorough discussion and agreement on any special provisions of placement.

c. During preparation, the provider shall discuss the child's readiness to accept the selected placement with the child, in accordance with the child's age and ability to understand.

6. Supervision of the Child

a. The provider placing a child shall remain responsible for the child until a final decree has been granted.

b. The child and family shall be seen within three weeks of placement and once every two month period thereafter and a visit within 30 days prior to the final decree.

c. At least two of the supervisory visits shall be in the adoptive home and shall include both adoptive parents (if applicable) and all other members of the household.

d. Observations made during the visits shall be used in making recommendations for finalization of the adoption or to assist the family if problems arise that cannot be resolved to the satisfaction of the family and provider. The provider shall assist the family directly and/or refer the family to a provisional resource outside of provider to address the problem(s).

e. In special needs placements, more supervisory visits should be made, at least one each two month period to provide information, assistance and support to the family.

f. Written reports of the supervisory visits shall be dated, sent to the department as part of the confidential report and placed in the child's record and adoptive parent(s) record.

g. The provider shall be available to give the child and adoptive parent(s) assistance, consultation and emotional support with situations and problems encountered in permanent placement.

h. The provider shall ensure continuation of case management, visits, and telephone contacts based upon the needs of the child until the adoption is legally granted.

i. The provider shall be made aware of any change in the adoptive home including health, education, or behavior.

j. The provider shall be responsible for assisting adoptive parents to finalize the adoption or in cases where the adoption cannot be finalized, to develop an alternative permanent plan and placement for the child.

H. Adoption Petition Process

1. The provider shall give written consent to the family for adoption at the end of six months or one year, whichever is applicable, of placement if the family wants finalization and any problems that have arisen during the placement are in a satisfactory stage of resolution.

2. The provider shall submit all documents establishing availability of the child (TPR, surrender or death certificate) and the child's certified birth certificate to the court when filing the adoption petition with the court.

3. Upon notification by the court of the filed petition, the department shall request from the adoption agent, in writing, any required information that must be part of the confidential report and the date the information is to be submitted. If the child was born in this state, the adoption agent shall also submit a completed Adoption Report to the Clerk of Court office.

4. The provider shall submit the requested information to the department by the date specified in the notification correspondence.

5. Upon receipt of the required information, the department will review it for accuracy and thoroughness. If any required information has not been submitted, the department will notify the provider.

6. Once all of the required information has been received and reviewed by the department, the provider shall be notified, in writing, that the report has been submitted to the court.

7. If all of the required information is not provided, the report submitted to the court will reflect what information is missing that was not provided by the adoption agent.

8. When filing a petition for the adoption of a foreign orphan, the petition shall be accompanied by a certification for adoption, a certified copy of the Immigration and Naturalization Service documentation of orphan status, the original or a certified copy of a valid foreign custody decree, together with a notarized translation, and the original or certified copy of a valid birth certificate, together with a notarized translation, and an affidavit of fees and expenses.

9. When filing a petition for recognition of a foreign decree of adoption, the petition shall be accompanied by a certification for adoption, a certified copy of the Immigration and Naturalization Service documentation of orphan status, documentary proof of citizenship status, the original or a certified copy of a valid foreign custody decree, together with a notarized translation, and the original or

certified copy of a valid birth certificate, together with a notarized translation, and an affidavit of fees and expenses.

I. Adoption Disruption

1. When it has been identified that there is an adoption disruption, and except in emergency situations, the provider shall assist the adoptive family and child to plan an adoption disruption and replacement of the child in a manner least detrimental to the child and family. After all available resources are used and the family is still thinking about discontinuing the placement, the provider shall hold a planning conference to review the situation. The planning conference shall be attended by the adoptive parents, the child (if and when in the best interest of the child), the placement worker, the placement supervisor and (if applicable) the previous foster care worker/custodian. The planning conference should cover the following:

- a. problems in the placement;
- b. what resources have been used;
- c. what other resources may be helpful;
- d. the pros and cons of continuing the placement;
- e. deciding whether to disrupt the placement or maintain the placement;
- f. if maintaining the placement is the plan, identifying additional services to be used;
- g. if disruption is the plan, discussing the placement alternatives for the child;
- h. planning how the disruption will occur.

2. The provider shall assist the family in giving the child, of sufficient age of understanding, a reason for the disruption. Where this is not possible, the provider shall inform the child.

3. The provider shall provide services to families who suffer an adoption disruption to deal with their grief and decide if another adoptive placement is an appropriate plan.

J. Final Decree

1. When a final decree has been rendered by the court, the provider shall review the final decree document for accuracy and ensure that the document has been filed with the applicable Clerk of Court.

2. If the child was born in this state, the provider shall submit the required fee for a revised birth certificate, along with a completed Certificate of Live Birth form PHS 19 and proof of citizenship, if applicable, to the department within 15 working days of the adoption finalization.

3. If the child was born in another state, the adoption agent shall submit a request to the agency responsible for the maintenance of vital records from the state in which the child was born in order to revise the child's birth certificate and ensure that the adoptive family receives a copy of the revised birth certificate.

4. In an inter-country adoption, the court shall issue a judgment recognizing the foreign adoption and rendering a final decree of adoption upon finding that:

- a. at least one of the adopting parents is a domiciliary of the state of Louisiana;
- b. the original or a certified copy of the foreign adoption decree, together with a notarized transcript, has been filed and is presumed to have been granted in accordance with the law of the foreign country;
- c. the child has qualified as a foreign orphan and is in the United States in accordance with applicable Immigration and Naturalization Service regulations;

d. the child is either a permanent resident or a naturalized citizen of the United States;

e. the petitioners have the ability to care for, maintain, and educate the child.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and ACT 64 of the 2010 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section LR 37:842 (March 2011).

§7317. Transitional Placing Program

A. General Requirements

1. Program Description

a. A provider shall have a written program description describing:

- i. the overall philosophy and approach to independent living;
- ii. the long-term and short-term goals;
- iii. the types of youth best served;
- iv. the provider's approach to service planning;
- v. ongoing programs available to the youth during placements; and
- vi. any living arrangements provided.

b. The provider must include a written description of direct services, support services, and services to be arranged to achieve the goals of the transitional placing program.

i. Direct services shall include, but are not limited to, the following:

(a) services related to education and vocational training e.g., career planning; preparation for the GED or higher education; job readiness; job search assistance; job placement; job follow-up activities; vocational training; tutoring and other remedial education;

(b) programs and services in basic independent living skills e.g., money management; home management (housekeeping, etc.); consumer skills; identifying community resources; time management; communication skills; use of transportation; physical and mental health care; locating safe and stable housing; problem solving/decision making; sex education; menu planning and nutrition; cooking;

(c) individual and/or group counseling as well as workshops and conferences to promote self-esteem; self confidence; development of interpersonal and social skills; preparation for transition to independence and termination of services; after care.

ii. Support services shall include, but not be limited to, the following:

- (a) vocational assessment or training;
- (b) GED classes;
- (c) preparation for college entrance exams;
- (d) driver's education, if appropriate;
- (e) counseling.

2. Number of Youth

a. The provider shall ensure that no more than three youth are placed in an apartment.

b. The provider who utilizes communal living arrangements (home situation) housing for four or more must obtain fire and health approval.

c. The provider's arrangements for selecting youth and youth groups for a specific living situation shall make allowance for the needs of each youth for reasonable privacy and shall not conflict with the program plan of any youth of

the living situation or with the overall philosophy of the provider.

d. No youth shall be placed together in a living situation except by mutual agreement between the youth. Signed agreements shall be maintained in each record.

3. Personnel Qualifications

a. Child Placement Worker. The Child Placement Worker (CPW) shall meet the following qualifications:

i. have a minimum of a bachelor's degree in social work or any bachelor's degree plus one year of social service experience;

ii. a child placement worker located in a branch office apart from the supervisor of placement services shall have a master's degree from an accredited school of social work;

iii. in providers where the child placement staff is comprised of one placement worker, this person shall meet the qualifications of the supervisor of placement services.

b. Child Placement Worker (CPW) Assistant. The CPW assistant shall:

i. be at least 18 years of age;

ii. have a high school diploma or equivalency; and

iii. have one year of experience providing basic child welfare support services to youth.

4. Personnel Job Duties

a. The CPW shall be responsible for:

i. assessing, developing, and executing a plan to achieve permanence for the youth including return to the family, adoptions, transfer of custody, independent living, or other alternative plans;

ii. providing services to a caseload of youth removed from their homes by court order, voluntary surrender, or voluntary placement agreement and placed in a foster home or a more restrictive setting;

iii. overseeing the placement to ensure the youth's well-being. Assesses probability of return and plan for the youth's permanency;

iv. developing and implementing a recruitment plan for certifying perspective foster and adoptive families;

v. preparing and conducting extensive orientation and training for potential foster and adoptive homes;

vi. examining and evaluating information gathered about families, housing, and environment in relation to provider criteria and licensing regulation for certification of perspective adoptive and foster homes;

vii. upon completion of written home studies, recommending approval or denial of certification for perspective adoptive and foster homes based on a combined evaluation and assessment process;

viii. re-evaluating for continued annual re-certification for foster and adoptive homes. Develops and implements a corrective action plan to correct deficiencies;

ix. maintaining listing of all foster and adoptive homes in area and recommends appropriate resources to workers placing youth.

b. The CPW assistant shall be responsible for:

i. assisting professional staff in providing services to the youth;

ii. instructing youth in the practical application of improved standards of housekeeping, shopping, personal

hygiene, medical and childcare, and other necessary home management skills;

iii. lifting or assisting youth into the transit with their personal belongings and any medically needed equipment such as a wheel chair, an oxygen tank, a walker, etc.;

iv. observing and reporting youth's behavior to professional staff to aid in the assessment and treatment plan of the case;

v. monitoring family visitation between caretaker and youth with parents, as required;

vi. preparing narrative reports and maintaining visitation log as required;

vii. scheduling and arranging youth transportation for follow-up visits;

viii. effectively communicating with youth to defuse potentially dangerous situations such as physical/verbal confrontations between youth and/or towards provider staff;

ix. completing various forms and reports.

x. may be responsible for vehicle maintenance and documentation of such.

5. Advisory Board

a. The provider shall develop written procedures for a Youth Advisory Board consisting of youth representatives receiving services to provide feedback relative to program policies, practices, and services.

i. The Youth Advisory Committee shall be allowed to meet at least monthly.

ii. The provider shall maintain documented minutes of the Youth Advisory Board and resolutions of problems addressed.

6. Money

a. A provider shall have a written policy describing how they will manage the youth's money.

b. A provider shall only accept a youth's money when such management is mandated by the youth's service plan. The provider shall manage and account for money of youth who are minors.

c. Providers who manage youth's money shall maintain in the youth's file a complete record accounting for his/her money.

i. The provider shall maintain a current balance sheet containing all financial transactions to include the signature of staff and the youth for each transaction.

ii. The money shall be kept in an individual account in the name of the youth.

d. Youth's monetary restitution for damages shall only occur when there is clear evidence of individual responsibility for the damages and the service team approves the restitution. The youth and his/her legal guardian(s) shall be notified in writing within 24 hours of any claim for restitution and shall be provided with specific details of the damages, how, when and where the damages occurred, and the amount of damages claimed. If the amount is unknown, an estimate of the damages shall be provided and an exact figure provided within 30 days. The resident and his/her legal guardian(s) shall be given a reasonable opportunity to respond to any claim for damages. If the provider receives reimbursement for damages either through insurance or other sources, the resident shall not be responsible for restitution.

7. Food Service

a. When meals are prepared in a central kitchen, the provider shall ensure that menus include the basic four food groups and each youth's nutritional needs are met. Menus shall be maintained on file for at least a month.

b. If youths develop and prepare their menus and meals, the provider shall give assistance to ensure nutritional standards.

8. Critical Incidents

a. If the youth is 18 to 21, the provider shall notify the law enforcement agency exercising local authority and jurisdiction.

9. Emergency Preparedness

a. The provider shall ensure the development of an emergency evacuation policy and safety plan for each youth that is specific for location of the living unit in the event of a fire, natural or national disaster. The youth's record shall document that the youth has acknowledged receiving a copy of this policy and plan at admission.

b. A provider shall document that all youth are trained in emergency procedures within one week of admission. Such training shall include:

- i. instruction in evacuation from the living situation;
- ii. instruction in contacting police, fire and other emergency services; and
- iii. instruction in fire and accident prevention.

B. Certification of an Independent Living Unit

1. Requirements for a Living Unit

a. The living unit shall be occupied by only a youth approved to occupy the living unit by the provider.

b. Nonresidents shall be asked to vacate the living unit.

c. Each youth shall have his/her own bed.

d. The provider shall assure and document that the living unit:

- i. does not present a hazard to the health and safety of the youth;
- ii. is well ventilated and heated; and
- iii. complies with state and local health requirements regarding water and sanitation;
- iv. is furnished with items to include:
 - (a). window coverings;
 - (b). basic local telephone service;
 - (c). food and kitchenware;
 - (d). linen;
 - (e). bedding;
 - (f). routine supplies.

C. Placement of a Youth

1. Initial Placement

a. The provider shall:

i. place a youth only in an approved foster care setting; and

ii. keep a youth who has been committed to the Department of Corrections, Office of Juvenile Justice for the commission of a sex crime in a separate living arrangement from a youth committed to the department.

2. Service Agreement

a. The provider shall ensure that a written service agreement is completed prior to placement. A copy of the agreement, signed by the provider, the youth, if applicable the legally responsible party and all those involved in its

formulation, shall be kept in the youth's record and a copy shall be available to DSS, the youth, and where appropriate, the legally responsible person.

b. The service agreement shall include:

i. a delineation of the respective roles and responsibilities of the provider and where applicable, the referring provider;

ii. specification of all services to be provided including the plan for contact between the youth and provider staff;

iii. facility rules that will govern continued participation in the transitional living program, and consequences of inappropriate behavior of youth while in care;

iv. the provider's expectations concerning the youth and the youth's responsibility;

v. criteria for discharge;

vi. specification of financial arrangements including any fees to be paid by the youth;

vii. authorization to care for the youth;

viii. authorization for medical care;

ix. attendance and absences from the provider to also include curfew times; and

x. criteria for notifying the funding provider of any change of address of the youth and any significant change in the youth's life or program.

c. The provider shall select a living arrangement for a youth based upon the individual needs of the youth based on an assessment of the youth's skills and knowledge.

d. The assessment shall be completed within 10 days of the youth's placement.

e. The assessment tool shall assess the following:

i. money management and consumer awareness;

ii. job search skills;

iii. job retention skills;

iv. use of and access to:

(a). community resources;

(b). housing; and

(c). transportation;

v. educational planning;

vi. emergency and safety skills;

vii. legal knowledge;

viii. interpersonal skills, including communication skills;

ix. health care knowledge, including knowledge of nutrition;

x. human development knowledge, including sexuality;

xi. management of food, including food preparation;

xii. ability to maintain personal appearance;

xiii. housekeeping; and

xiv. leisure activities.

f. The youth shall participate in the intake process and in the decision that placement is appropriate, to the extent that the youth's age, maturity, adjustment, family relationships, and the circumstance necessitating placement justify the youth's participation.

g. The provider shall document the placement in the provider's file.

h. The assessment will be placed in the youth's record.

3. Service Plan
 - a. The provider shall:
 - i. within 30 days of a youth's placement, develop a written service plan based upon the individual needs of the youth and, if appropriate, the youth's family, which addresses the:
 - (a). educational, job training, housing, and independent living goals;
 - (b). objectives to accomplish a goal;
 - (c). methods of service delivery necessary to achieve a goal and an objective;
 - (d). person responsible for each activity;
 - (e). specific timeframes to achieve a goal and an objective;
 - (f). identification of a discharge plan;
 - (g). plan for aftercare services; and
 - (h). plan for services from a cooperating provider;
 - ii. review the youth's service plan, placement and permanency goals on a quarterly basis or more frequently as the youth's needs or circumstances dictate.

4. Supervision of the Youth

- a. The provider shall have a written plan for providing support and supervision.
- b. The provider staff shall have contact with the youth on a daily basis which may include, but is not limited to, a confirmed e-mail or text or telephone contact.
- c. The provider staff shall have at least three face-to-face visits weekly. A youth may not be seen less than the above amount unless specified by his/her plan, which has been signed by the parent or legal guardian.
- d. All contacts with the youth shall be documented; and
- e. There shall be provisions for emergency access by youth to an appropriate provider staff member on a 24-hour basis.
- f. The provider shall, through at least monthly visits by staff to the living situation, determine and document that:
 - i. there is no reasonable cause for believing that the youth's mode of life or living situation presents any unacceptable risks to the youth's health or safety including a review for use of alcohol or illegal contraband;
 - ii. the living situation is maintained in a clean and safe condition;
 - iii. the youth is receiving any necessary medical care;
 - iv. the current provider plan provides appropriate and sufficient services to the youth.
- g. Document annual compliance with fire and building codes for any living unit in which the provider places the youth.

5. Discharge Process
 - a. A provider shall have a written discharge policy detailing the reasons a youth may be discharged.
 - b. A provider shall, whenever possible, notify the youth's parent(s), tutor or curator as soon as possible or within fourteen working days prior to the planned discharge of a youth.
 - c. A provider shall compile a complete written discharge summary immediately upon discharge; such

summary to be included in the youth's record. When the youth is discharged to another provider, this summary must accompany the youth. This summary shall include:

- i. a summary of services provided during involvement in the program;
- ii. a summary of growth and accomplishments during involvement;
- iii. the assessed needs which remain to be met and alternate service possibilities that might meet those needs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and ACT 64 of the 2010 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section LR 37:854 (March 2011).

Ruth Johnson
Secretary

1103#062

RULE

Board of Elementary and Secondary Education

Bulletin 111—The Louisiana School, District, and State Accountability System—9-12 Transition from 2010 to 2012 (LAC 28:LXXXIII.302)

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. The changes provide detail for transition of schools in grades 9-12. These changes will provide a process to keep all schools accountable while the current 9-12 assessment program is phased out and End-of-Course tests are phased in. The changes also allow for waivers for any school that is AUS in 2011 due exclusively to the elimination of 9th grade iLEAP.

Title 28 EDUCATION

Part LXXXIII. Bulletin 111—The Louisiana School, District, and State Accountability System Chapter 3. School Performance Score Component §302. 9-12 Transition from 2010 to 2012

A. - C. ...

D. The 2011 baseline SPS for 9-12 and the 9-12 component of combination schools shall be comprised of 70 percent assessment index calculated using 2010 iLEAP results, 2010 and 2011 GEE results, and 30 percent graduation index from the 2009 and 2010 cohorts.

E. - I. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2241 (October 2010), amended LR 37:857 (March 2011).

Catherine R. Pozniak
Executive Director

1103#024

RULE

Board of Elementary and Secondary Education

Bulletin 118—Statewide Assessment
Standards and Practices
(LAC 28:CXI.Chapters 3, 7, 17, 18, 19, 20, 33, and 35)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 118—Statewide Assessment Standards and Practices*: §305. Test Security Policy, §315. Emergencies During Testing, §701. Overview of Assessment Programs in Louisiana, §1700. Sunset Provision, §1810. Geometry Test Structure, §1813. Performance Standards, §1817. EOCT Achievement Level Descriptors, §1823. Rescores, §1829. EOCT Transfer Rules, §1831. College and Career Diploma, §1900. Sunset Provision, §2000. Sunset Provision, §3307. Limited English Proficient Students, §3501. Approved Home Study Program Students, and §3511. Migrant Students.

The document will provide new and updated statewide test information and provide easy access to that information. It was necessary to revise the bulletin at this time to incorporate new and edited policy guidelines in the statewide assessment programs Chapter 3, Test Security; Chapter 7, Assessment Program Overview; Chapter 17, Integrated LEAP (iLEAP); Chapter 18, End-of-Course Tests (EOCT); Chapter 19, LEAP Alternate Assessment, Level 1 (LAA 1); Chapter 20, LEAP Alternate Assessment, Level 2 (LAA 2); Chapter 33, Assessment of Special Populations; and Chapter 35, Assessment of Students in Special Circumstances. New policy language updates and edits were made to chapters 3, 7, 18, 33, and 35. New policy language additions were made to Chapters 17, 18, and 19.

**Title 28
EDUCATION**

Part CXI. Bulletin 118 Statewide Assessment Standards and Practices

Chapter 3. Test Security

§305. Test Security Policy

A.1. - 3.k. ...

4. Each school district as described in this policy shall develop and adopt a district test security policy that is in compliance with the state's test security policy. A copy of the policy and a Statement of Assurance regarding the LEA's test security policy must be submitted annually to the LDE, Division of Assessments and Accountability. This statement must include the name of the individual designated by the district superintendent or institution to procure test material. The policy shall provide:

4.a. - 17. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.7 (C) (G).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1528 (July 2005), amended LR 32:233 (February 2006), LR 33:255 (February 2007), LR 33:424 (March 2007), LR 33:2033 (October 2007), LR 34:65 (January 2008), LR 34:431 (March 2008), LR 34:1351 (July 2008), LR 35:217 (February 2009), LR 37:858 (March 2011).

§315. Emergencies During Testing

A. - A.7 ...

B. End-Of-Course Tests (EOCT) Emergency Plan

1. Each school district shall develop and adopt a district test security policy disaster plan for EOC testing that is in compliance with the state's test security policy. A Statement of Assurance regarding the LEA's EOC disaster plan must be submitted annually to the LDE, Division of Assessment and Accountability. This statement must provide the steps to be followed in the event of a major disaster that results in the disabling of computers during EOC testing such as the following:

- a. fire;
- b. lightning;
- c. flooding; and
- d. others.

2. If online testing is disrupted by emergencies, lost Internet connections, lost power, or computer crashes and students are unable to continue testing on the same day, the school test coordinator should document what occurred as a testing irregularity and notify the district test coordinator. If the student will be unable to return to testing by the end of the day after the disruption, the district test coordinator must immediately notify the LDE, Division of Assessments and Accountability.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1532 (July 2005), amended LR 32:234 (February 2006), LR 33:258 (February 2007), LR 34:66 (January 2008), LR 35:218 (February 2009), LR 37:858 (March 2011).

Chapter 7. Assessment Program Overview

§701. Overview of Assessment Programs in Louisiana

A. Norm-Referenced and Criterion-Referenced Testing Programs Since 1986

Name of Assessment Program	Assessment Population	Administered
Kindergarten Screening		
Kindergarten Developmental Readiness Screening Program (KDRSP)	Kindergarten	fall 1987-
Norm-Referenced Tests (NRTs)		
California Achievement Test (CAT/F)	grades 4, 6, and 9	spring 1988-spring 1992 (no longer administered)
California Achievement Test (CAT/5)	grades 4 and 6 grade 8	spring 1993-spring 1997 spring 1997 only (no longer administered)
Iowa Tests of Basic Skills (ITBS) (form L) and Iowa Tests of Educational Development (ITED) (form M)	grades 4, 6, 8, 9, 10, and 11	spring 1998 (no longer administered)
ITBS ITED (form M)	grades 3, 5, 6, and 7 grade 9	spring 1999-spring 2002 (no longer administered)

Name of Assessment Program	Assessment Population	Administered
ITBS ITED (form B)	grades 3, 5, 6, and 7 grade 9	spring 2003–spring 2005 (no longer administered)
Criterion-Referenced Tests (CRTs)		
National Assessment of Educational Progress (NAEP)	grades 4, 8, and 12	spring 1990–
Louisiana Educational Assessment Program (LEAP)	grades 3, 5, and 7	spring 1989–spring 1998 (no longer administered)
Graduation Exit Examination (“old” GEE)	grades 10 and 11	spring 1989–spring 2003 (state administered) fall 2003– (district administered)
Louisiana Educational Assessment Program (LEAP) (ELA and Mathematics)	grades 4 and 8	spring 1999–
LEAP (Science and Social Studies)	grades 4 and 8	spring 2000–
Graduation Exit Examination (GEE) (ELA and Mathematics)	grade 10	spring 2001–
GEE (Science and Social Studies)	grade 11	spring 2002–
End-Of-Course Tests (EOCT)	Algebra I	fall 2007–
EOCT	Algebra I	spring 2008–
EOCT	English II	fall 2008–
EOCT	English II	spring 2009–
EOCT	Geometry	fall 2009–
EOCT	Geometry	spring 2010–
EOCT	Biology	fall 2010
EOCT	Biology	spring 2011
Integrated NRT/CRT		
Integrated Louisiana Educational Assessment Program (iLEAP)	Integrated Louisiana Educational Assessment Program (iLEAP)	Integrated Louisiana Educational Assessment Program (iLEAP)
iLEAP	Grade 9	Spring 2010 (last administration of grade 9 iLEAP)
Special Population Assessments		
Louisiana Alternate Assessment, Level 1 (LAA 1)	Students with Individualized Education Programs (IEPs) who meet participation criteria in grades 3–11.	spring 2000–2007
LAA 1	ELA and Mathematics (grade spans 3–4; 5–6; 7–8; 9–10); Science (grades 4, 8, and 11)	Revised spring 2008–
LAA 1 ELA and Mathematics	Grade 9	Spring 2010 (last administration of grade 9 LAA 1)

Name of Assessment Program	Assessment Population	Administered
Louisiana Alternate Assessment, Level 2 (LAA 2) ELA and Mathematics (Grades 4, 8, and 10) Science and Social Studies (Grade 11)	grades 4, 8, 10, and 11	spring 2006–
LAA 2 ELA and Mathematics	grades 5, 6, 7, and 9	spring 2007–
LAA 2 ELA and Mathematics	Grade 9	Spring 2010 (last administration of grade 9 LAA 2)
LAA 2 Science and Social Studies	grades 4 and 8	spring 2008–
Louisiana Alternate Assessment-B (LAA-B) [“out-of-level” test]	Students with Individualized Education Programs (IEPs) who met eligibility criteria in grades 3–11.	spring 1999–spring 2003 (no longer administered)
English Language Development Assessment (ELDA)	Limited English Proficient (LEP) students in grades K–12	spring 2005–

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1534 (July 2005), amended LR 32:235 (February 2006), LR 34:66 (January 2008), LR 34:1352 (July 2008), LR 35:218 (February 2009), LR 37:858 (March 2011).

Chapter 17. Integrated LEAP
Subchapter A. General Provisions
§1700. Sunset Provision

A. Beginning academic year 2010–2011, grade 9 iLEAP tests will no longer be administered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7 and R.S. 17:24.4(F)(2).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 37:859 (March 2011).

Chapter 18. End-of-Course Tests
Subchapter C. EOCT Test Design
§1810. Geometry Test Structure

A. The Geometry EOC test includes three sessions, all of which will be administered online:

1. 25-item multiple-choice session in which students may not use calculators;
2. 3-item constructed-response session, in which students may use calculators; and
3. 25-item multiple-choice session in which students may use calculators.

B. Student responses to multiple-choice items will be computer-scored.

C. Student responses to the constructed-response items will be scored by the contractor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 37:859 (March 2011).

Subchapter D. Achievement Levels and Performance Standards

§1813. Performance Standards

A. - B.2. ...

3. Geometry Scaled-Score Ranges

English II	
Achievement Level	Scaled-Score Ranges
Excellent	731-800
Good	700-730
Fair	665-699
Needs Improvement	600-664

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 35:215 (February 2009), amended LR 36:478 (March 2010), LR 37:820 (March 2011).

Subchapter E. Achievement Level Descriptors

§1817. EOCT Achievement Level Descriptors

A. - B. ...

C. Geometry Achievement Level Descriptors

Excellent	
Students at this achievement level generally have exhibited the ability to:	
1.	define and use trigonometric ratios to solve problems involving right triangles;
2.	understand and apply the Pythagorean Theorem in multi-step problems;
3.	calculate permutations and combinations to solve multi-step, real-world problems;
4.	solve problems in coordinate geometry involving distances;
5.	simplify radical expressions;
6.	compare inductive reasoning strategies;
7.	write equations of parallel lines;
8.	solve real-life and mathematical problems involving angle measure using parallel and perpendicular relationships; and
9.	find arc lengths of circles.
Good	
Students at this achievement level generally have exhibited the ability to:	
1.	solve multi-step problems using properties of radii, chords, secants, and tangents of a circle;
2.	write an equation of a line of best fit;
3.	calculate the probability of a simple, conditional event;
4.	solve real-world and mathematical problems involving volume and surface area of spheres;
5.	write conditional statements and make logical conclusions;
6.	build a function that models a relationship between two quantities;
7.	perform and/or analyze dilations of geometric figures;
8.	use similarity criteria for triangles to solve multi-step problems;
9.	make conjectures using properties of quadrilaterals; and
10.	analyze and use proportional relationships to solve real-world and mathematical problems.

Fair	
Students at this achievement level generally have exhibited the ability to:	
1.	use the Triangle-Sum Theorem to solve simple real-world and mathematical problems;
2.	calculate the volume of a solid when given a diagram;
3.	calculate a missing side length using similar triangles;
4.	identify a geometric solid when given a set of attributes;
5.	describe or interpret patterns in measurement data;
6.	derive a rule for a pattern in a number sequence;
7.	use angle relationships to find the measure of a missing angle;
8.	solve one-step, real-world problems using proportional reasoning;
9.	identify the type of transformation performed on a geometric figure;
10.	use discrete math (elections, fair games, flow maps, color maps, etc.) and a given set of conditions to determine possible outcomes; and
11.	identify a correct informal proof.
Needs Improvement	
Students at this achievement level are generally working toward the ability to:	
1.	use angle relationships to find the measure of a missing angle;
2.	solve one-step, real-world problems using proportional reasoning;
3.	identify the type of transformation performed on a geometric figure;
4.	use discrete math (elections, fair games, flow maps, color maps, etc.) and a given set of conditions to determine possible outcomes; and
5.	identify a correct informal proof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 37:820 (March 2011).

Subchapter F. EOCT Administrative Rules

§1823. Rescores

A. - D. ...

1. The test has a scaled score ten points below the Fair achievement level.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 36:977 (May 2010), amended LR 37:820 (March 2011).

§1829. EOC Transfer Rules

A. ...

1. A transfer student is not required to take the EOC tests for courses he/she already successfully completed for Carnegie credit.

2. A transfer student shall be required to take the EOC test for courses he/she previously took but did not pass.

3. A transfer student may choose to take an EOC test for a course he/she already successfully completed if he/she scored *Needs Improvement* on an EOC test in another course and the student must pass the EOC test for one of the EOC pairs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 36:978(May2010), amended LR 37:820 (March 2011).

§1831. College and Career Diploma

A. Refer to *Bulletin 741: Louisiana's Handbook for School Administrators*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 37:821 (March 2011).

Chapter 19. LEAP Alternate Assessment, Level 1

Subchapter A. Background

§1900. Sunset Provision

A. Beginning academic year 2010-2011, grade 9 LAA 1 tests will no longer be administered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 (F) (3) and R.S. 17:183.1–17:183.3.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 37:821 (March 2011).

Chapter 20. LEAP Alternate Assessment, Level 2

Subchapter A. Background

§2000. Sunset Provision

A. Beginning academic year 2010-2011, grade 9 LAA 2 tests will no longer be administered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 (F) (3) and R.S. 17:183.1-17:183.3.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 37:821 (March 2011).

Chapter 33. Assessment of Special Populations

§3307. Limited English Proficient Students

A. - C.1.e. ...

D. Native-language versions of state assessments are not provided for limited English proficient (LEP) students.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq. and R.S. 17:24.4 (F)(3).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1562 (July 2005), amended by the Board of Elementary and Secondary Education, LR 32:240 (February 2006), LR 33:264 (February 2007), LR 33:1010 (June 2007), LR 36:983 (May 2010), LR 37:821 (March 2011).

Chapter 35. Assessment of Students in Special Circumstances

§3501. Approved Home Study Program Students

A. - D. ...

E. Students and state-approved home study programs may take the *i*LEAP tests in grades 3, 5, 6, and 7.

F. - G. ...

H. Students enrolled in state-approved home study Programs are not eligible to participate in LAA 1, LAA 2, ELDA, or EOC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:236.1-17:236.2, R.S. 17:6 (A) (10) (11) (15), R. S. 17:10, R. S. 17:22 (6), R. S. 17:391.1-17:391.10, R. S. 17:411.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1563 (July 2005), amended by the Board of Elementary and Secondary Education, LR 32:240 (February 2006), LR 33:264 (February 2007), LR 36:983 (May 2010), LR 37:821 (March 2011).

§3511. Migrant Students

A. Migrant students shall take the appropriate assessment for their enrolled grade during the scheduled assessment period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:151.3 and R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 37:821 (March 2011).

Catherine R. Pozniak
Executive Director

1103#025

RULE

Board of Elementary and Secondary Education

Bulletin 125—Standards for Educational
Leaders in Louisiana
(LAC 28:CXXXVII.Chapters 1 and 3)

Editor's Note: This Rule is being repromulgated to correct codification errors. The original Rule may be viewed on pages 2244-2250 of the October 2010 *Louisiana Register*.

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has adopted *Bulletin 125—Standards for Educational Leaders in Louisiana*: LAC 28:CXXXVII.Chapters 1-2. The revised standards reflect the newly revised national standards for educational leaders. The expectations and indicators more clearly define the knowledge, skills, and dispositions educational leaders need to be effective and increase student achievement. The new standards were updated to align with the National Leadership Standards.

Title 28

EDUCATION

Part CXXXVI. Bulletin 125—Standards for Educational Leaders in Louisiana

Chapter 1. Purpose

§101. Introduction

A. A critical component to ensuring that the goals of the state's School and District Accountability System are achieved is the placement of effective administrators at every school. In order for this to be attained, attention must be focused on building leadership capacity at both the school and district levels. Utilizing the standards for educational leaders, educational leaders are strongly encouraged to examine organizational structures, their enacted roles, and day-to-day operations to ensure they are leading the way for school success by keeping the focus on enhanced student achievement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17 and R.S.17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:1335 (July 2007), LR 36:2244 (October 2010), repromulgated LR 37:821 (March 2011).

Chapter 3. Standards

§301. Performance Expectations and Indicators for Educational Leaders

A. In 2008, the Council of Chief State School Officers (CCSSO) State Consortium on Educational Leadership

revised the Interstate School Leaders Licensure Consortium (ISLLC) standards for educational leaders and renamed them *Performance Expectations and Indicators for Educational Leaders*. The *Performance Expectations and Indicators for Educational Leaders* represent consensus among state education agency policy leaders about the most important actions required of K-12 education leaders to improve teaching and learning. The main purpose of the *Performance Expectations and Indicators for Educational Leaders* is to provide a resource for policymakers and educators in states, districts, and programs to analyze and prioritize expectations of education leaders in various roles and strategic stages in their careers. *Performance Expectations and Indicators for Educational Leaders* is also intended to support national, state, and local dialogue about how to improve leadership.

B. The state has adopted the *Performance Expectations and Indicators for Educational Leaders* as the Louisiana state standards for educational leaders.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17 and R.S.17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2244 (October 2010), repromulgated LR 37:821 (March 2011).

§303. Performance Expectation 1

A. Vision, Mission, and Goals

1. Education leaders ensure the achievement of all students by guiding the development and implementation of a shared vision of learning, strong organizational mission, and high expectations for every student.

a. Dispositions Exemplified in Expectation 1. Education leaders believe in, value, and are committed to:

- i. every student learning;
- ii. collaboration with all stakeholders;
- iii. high expectations for all;
- iv. examining assumptions and beliefs;
- v. continuous improvement using evidence.

B. Narrative

1. Education leaders are accountable and have unique responsibilities for developing and implementing a vision of learning to guide organizational decisions and actions. Education leaders guide a process for developing and revising a shared vision, strong mission, and goals that are high and achievable for every student when provided with appropriate, effective learning opportunities.

2. The vision, mission, and goals represent what the community intends for students to achieve, informed by the broader social and policy environment and including policy requirements about specific outcomes and continuous improvement. The vision, mission, and goals become the touchstone for decisions, strategic planning, and change processes. They are regularly reviewed and adjusted, using varied sources of information and ongoing data analysis.

3. Leaders engage the community to reach consensus about vision, mission, and goals. To be effective, processes of establishing vision, mission, and goals should incorporate diverse perspectives in the broader school community and create consensus to which all can commit. While leaders engage others in developing and implementing the vision, mission, and goals, it is undeniably their responsibility to advocate for and act to increase equity and social justice.

C. Element A—High Expectations for All. The vision and goals establish high, measurable expectations for all students and educators.

1. Indicators. A leader:

a. uses varied sources of information and analyzes data about current practices and outcomes to shape a vision, mission, and goals with high, measurable expectations for all students and educators;

b. aligns the vision, mission, and goals to school, district, state, and federal policies (such as content standards and achievement targets);

c. incorporates diverse perspectives and crafts consensus about vision, mission, and goals that are high and achievable for every student when provided with appropriate, effective learning opportunities;

d. advocates for a specific vision of learning in which every student has equitable, appropriate, and effective learning opportunities and achieves at high levels.

D. Element B—Shared Commitments to Implement the Vision, Mission, and Goals. The process of creating and sustaining the vision, mission, and goals is inclusive, building common understandings and genuine commitment among all stakeholders.

1. Indicators. A leader:

a. establishes, conducts, and evaluates processes used to engage staff and community in a shared vision, mission, and goals;

b. engages diverse stakeholders, including those with conflicting perspectives, in ways that build shared understanding and commitment to vision, mission, and goals;

c. develops shared commitments and responsibilities that are distributed among staff and the community for making decisions and evaluating actions and outcomes;

d. communicates and acts from shared vision, mission, and goals so educators and the community understand, support, and act on them consistently;

e. advocates for and acts on commitments in the vision, mission, and goals to provide equitable, appropriate, and effective learning opportunities for every student.

E. Element C—Continuous Improvement Toward the Vision, Mission, and Goals. Education leaders ensure the achievement of all students by guiding the development and implementation of a shared vision of learning, strong organizational mission, and high expectations for every student.

1. Indicators. A leader:

a. uses or develops data systems and other sources of information (e.g., test scores, teacher reports, student work samples) to identify unique strengths and needs of students, gaps between current outcomes and goals, and areas for improvement;

b. makes decisions informed by data, research, and best practices to shape plans, programs, and activities and regularly review their effects;

c. uses data to determine effective change strategies, engaging staff and community stakeholders in planning and carrying out changes in programs and activities;

d. identifies and removes barriers to achieving the vision, mission, and goals;

e. incorporates the vision and goals into planning (e.g., strategic plan, school improvement plan), change strategies, and instructional programs;

f. obtains and aligns resources (such as learning technologies, staff, time, funding, materials, training, and so on) to achieve the vision, mission, and goals;

g. revises plans, programs, and activities based on systematic evidence and reviews of progress toward the vision, mission, and goals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17 and R.S.17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2244 (October 2010), repromulgated LR 37:862 (March 2011).

§305. Performance Expectation 2

A. Teaching and Learning

1. Education Leaders ensure achievement and success of all students by monitoring and continuously improving teaching and learning.

a. Dispositions Exemplified in Expectation 2. Education leaders believe in, value, and are committed to:

- i. learning as the fundamental purpose of school;
- ii. diversity as an asset;
- iii. continuous professional growth and development;
- iv. lifelong learning;
- v. collaboration with all stakeholders;
- vi. high expectations for all;
- vii. student learning.

B. Narrative

1. A strong, positive, professional culture fosters learning by all educators and students. In a strong professional culture, leaders share and distribute responsibilities to provide quality, effectiveness, and coherence across all components of the instructional system (such as curriculum, instructional materials, pedagogy, and student assessment). Leaders are responsible for a professional culture in which learning opportunities are targeted to the vision and goals and differentiated appropriately to meet the needs of every student. Leaders need knowledge, skills, and beliefs that provide equitable differentiation of instruction and curriculum materials to be effective with a range of student characteristics, needs, and achievement.

2. A strong professional culture includes reflection, timely and specific feedback that improves practice, and support for continuous improvement toward vision and goals for student learning. Educators plan their own professional learning strategically, building their own capacities on the job. Leaders engage in continuous inquiry about effectiveness of curricula and instructional practices and work collaboratively to make appropriate changes that improve results.

C. Element A—Strong Professional Culture. A strong professional culture supports teacher learning and shared commitments to the vision and goals.

1. Indicators. A leader:

a. develops shared understanding, capacities, and commitment to high expectations for all students and closing achievement gaps;

b. guides and supports job-embedded, standards-based professional development that improves teaching and learning and meets diverse learning needs of every student;

c. models openness to change and collaboration that improves practices and student outcomes;

d. develops time and resources to build a professional culture of openness and collaboration, engaging teachers in sharing information, analyzing outcomes, and planning improvement;

e. provides support, time, and resources for leaders and staff to examine their own beliefs, values, and practices in relation to the vision and goals for teaching and learning;

f. provides ongoing feedback using data, assessments, and evaluation methods that improve practice;

g. guides and monitors individual professional development plans and progress for continuous improvement of teaching and learning.

D. Element B—Rigorous Curriculum and Instruction. Improving achievement of all student requires all educators to know and use rigorous curriculum and effective instructional practices, individualized for success of every student.

1. Indicators. A leader:

a. develops shared understanding of rigorous curriculum and standards-based instructional programs, working with teams to analyze student work, monitor student progress, and redesign curricular and instructional programs to meet diverse needs;

b. provides coherent, effective guidance of rigorous curriculum and instruction, aligning content standards, curriculum, teaching, assessments, professional development, assessments, and evaluation methods;

c. provides and monitors effects of differentiated teaching strategies, curricular materials, educational technologies, and other resources appropriate to address diverse student populations, including students with disabilities, cultural and linguistic differences, gifted and talented, disadvantaged social economic backgrounds, or other factors affecting learning;

d. identifies and uses high-quality research and data-based strategies and practices that are appropriate in the local context to increase learning for every student.

E. Element C—Assessment and Accountability. Improving achievement and closing achievement gaps require that leaders make appropriate, sound use of assessments, performance management, and accountability strategies to achieve vision, mission, and goals.

1. Indicators. A leader:

a. develops and appropriately uses aligned, standards-based accountability data to improve the quality of teaching and learning;

b. uses varied sources and kinds of information and assessments (such as test scores, work samples, and teacher judgment) to evaluate student learning, effective teaching, and program quality;

c. guides regular analyses and disaggregation of data about all students to improve instructional programs;

d. uses effective data-based technologies and performance management systems to monitor and analyze assessment results for accountability reporting and to guide continuous improvement;

e. interprets data and communicates progress toward vision, mission, and goals for educators, the school community, and other stakeholders.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17 and R.S.17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2245 (October 2010), repromulgated LR 37:863 (March 2011).

§307. Performance Expectation 3

A. Managing Organizational Systems and Safety

1. Education leaders ensure the success of all students by managing organizational systems and resources for a safe, high-performing learning environment.

a. Dispositions Exemplified in Expectation 3. The education leader believes in, values, and is committed to:

- i. a safe and supportive learning environment;
- ii. collaboration with all stakeholders;
- iii. equitable distribution of resources;
- iv. operating efficiently and effectively;
- v. management in service of staff and student learning.

B. Narrative

1. Traditionally, school leaders focused on the management of a school or school district. A well-run school where buses run on time, the facility is clean, and the halls are orderly and quiet used to be the mark of an effective school leader. With the shift to leadership for learning, maintaining an orderly environment is necessary but not sufficient to meet the expectations and accountability requirements facing educators today.

2. Education leaders need a systems approach in complex organizations of schools and districts. In order to ensure the success of all students and provide a high-performing learning environment, education leaders manage daily operations and environments through efficiently and effectively aligning resources with vision and goals. Valuable resources include financial, human, time, materials, technology, physical plant, and other system components.

3. Leaders identify and allocate resources equitably to address the unique academic, physical, and mental health needs of all students. Leaders address any conditions that might impede student and staff learning, and they implement laws and policies that protect safety of students and staff. They promote and maintain a trustworthy, professional work environment by fulfilling their legal responsibilities, enacting appropriate policies, supporting due process, and protecting civil and human rights of all.

C. Element A—Effective Operational Systems. Leaders distribute leadership responsibilities and supervise daily, ongoing management structures and practices to enhance teaching and learning.

1. Indicators. A leader:

- a. uses effective tools such as problem-solving skills and knowledge of strategic, long-range, and operational planning to continuously improve the operational system;
- b. maintains the physical plant for safety, ADA requirements, and other access issues to support learning of every student;
- c. develops and facilitates communication and data systems that assure the timely flow of information;
- d. oversees acquisition and maintenance of equipment and effective technologies, particularly to support teaching and learning;
- e. distributes and oversees responsibilities for leadership of operational systems;
- f. evaluates and revises processes to continuously improve the operational system.

D. Element B—Aligned Fiscal and Human Resources. Leaders establish an infrastructure for finance and personnel that operates in support of teaching and learning.

1. Indicators. A leader:

- a. operates within budget and fiscal guidelines and directs them effectively toward teaching and learning;
- b. allocates funds based on student needs within the framework of federal and state rules;
- c. aligns resources (such as time, people, space, and money) to achieve the vision and goals;
- d. implements practices to recruit and retain highly qualified personnel;
- e. assigns personnel to address diverse student needs, legal requirements, and equity goals;
- f. conducts personnel evaluation processes that enhance professional practice, in keeping with district and state policies;
- g. seeks and secures additional resources needed to accomplish the vision and goals.

E. Element C—Protecting the Welfare and Safety of Students and Staff. Leaders ensure a safe environment by addressing real and potential challenges to the physical and emotional safety and security of students and staff that interfere with teaching and learning.

1. Indicators. A leader:

- a. advocates for and creates collaborative systems and distributed leadership responsibilities that support student and staff learning and well-being;
- b. involves parents, teachers, and students in developing, implementing, and monitoring guidelines and norms for accountable behavior;
- c. develops and monitors a comprehensive safety and security plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17 and R.S.17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2246 (October 2010), repromulgated LR 37:864 (March 2011).

§309. Performance Expectation 4

A. Collaborating with Families and Stakeholders

1. Education leaders ensure the success of all students by collaborating with families and stakeholders who represent diverse community interests and needs and mobilizing community resources that improve teaching and learning.

a. Dispositions exemplified in Expectation 4. The education leader believes in, values, and is committed to:

- i. high standards for all;
- ii. including family and community as partners;
- iii. respect for the diversity of family composition;
- iv. continuous learning and improvement for all.

B. Narrative

1. In order to educate students effectively for participation in a diverse, democratic society, leaders incorporate participation and views of families and stakeholders for important decisions and activities of schools and districts. Key stakeholders include educators, students, community members, and organizations that serve families and children.

2. Leaders recognize that diversity enriches and strengthens the education system and a participatory democracy. Leaders regard diverse communities as a resource and work to engage all members in collaboration

and partnerships that support teaching and learning. Leaders help teachers communicate positively with families and make sure families understand how to support their children's learning. In communicating with parents and the community, leaders invite feedback and questions so that communities can be partners in providing the best education for every student.

C. Element A—Collaboration with Families and Community Members. Leaders extend educational relationships to families and community members to add programs, services, and staff outreach and provide what every student needs to succeed in school and life.

1. Indicators. A leader:

a. brings together the resources of schools, family members, and community to positively affect student and adult learning, including parents and others who provide care for children;

b. involves families in decision making about their children's education;

c. uses effective public information strategies to communicate with families and community members (such as email, night meetings, and written materials in multiple languages);

d. applies communication and collaboration strategies to develop family and local community partnerships;

e. develops comprehensive strategies for positive community and media relations.

D. Element B—Community Interests and Needs. Leaders respond and contribute to community interests and needs in providing the best possible education for their children.

1. Indicators. A leader:

a. identifies key stakeholders and is actively involved within the community, including working with community members and groups that have competing or conflicting perspectives about education;

b. uses appropriate assessment strategies and research methods to understand and accommodate diverse student and community conditions and dynamics;

c. seeks out and collaborates with community programs serving students with special needs;

d. capitalizes on diversity (such as cultural, ethnic, racial, economic, and special interest groups) as an asset of the school community to strengthen educational programs;

e. demonstrates cultural competence in sharing responsibilities with communities to improve teaching and learning.

E. Element C—Building on Community Resources. Leaders maximize shared resources among schools, districts, and communities that provide key social structures and gathering places, in conjunction with other organizations and agencies that provide critical resources for children and families.

1. Indicators. A leader:

a. links to and collaborates with community agencies for health, social, and other services to families and children;

b. develops mutually beneficial relationships with business, religious, political, and service organizations to share school and community resources (such as buildings, playing fields, parks, medical clinics, and so on);

c. uses public resources and funds appropriately and effectively;

d. secures community support to sustain existing resources and add new resources that address emerging student needs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17 and R.S.17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2247 (October 2010), repromulgated LR 37:864 (March 2011).

§311. Performance Expectation 5

A. Ethics and Integrity

1. Education leaders ensure the success of all students by being ethical and acting with integrity.

a. Dispositions Exemplified in Expectation 5. The education leader believes in, values, and is committed to:

i. the common good over personal interests;

ii. taking responsibility for actions;

iii. ethical principles in all relationships and decisions;

iv. modeling high expectations;

v. continuously improving knowledge and skills.

B. Narrative

1. Local and state education agencies and professional organizations hold educators to codes of ethics, with attention to personal conduct, fiscal responsibilities, and other types of ethical requirements. The performance expectations build on concepts of professional ethics and integrity and add an emphasis on responsibilities of leaders for educational equity and social justice in a democratic society. Education is the primary socializing institution, conferring unique benefits or deficits across diverse constituents.

2. Leaders recognize that there are existing inequities in current distribution of high-quality educational resources among students. Leaders remove barriers to high-quality education that derive from economic, social, cultural, linguistic, physical, gender, or other sources of discrimination and disadvantage. They hold high expectations of every student and assure that all students have what they need to learn what is expected. Further, leaders are responsible for distributing the unique benefits of education more equitably, expanding future opportunities of less-advantaged students and families and increasing social justice across a highly diverse population.

3. Current policy environments with high-stakes accountability in education require that leaders are responsible for positive and negative consequences of their interpretations and implementation of policies as they affect students, educators, communities, and their own positions. Politically skilled, well-informed leaders understand and negotiate complex policies (such as high-stakes accountability), avoiding potential harm to students, educators, or communities that result from ineffective or insufficient approaches.

4. Ethics and integrity mean leading from a position of caring, modeling care and belonging in educational settings, personally in their behavior and professionally in concern about students, their learning, and their lives. Leaders demonstrate and sustain a culture of trust, openness, and reflection about values and beliefs in education. They model openness about how to improve learning of every

student. They engage others to share decisions and monitor consequences of decisions and actions on students, educators, and communities.

C. Element A—Ethical and Legal Standards. Leaders demonstrate appropriate ethical and legal behavior expected by the profession.

1. Indicators. A leader:

a. models personal and professional ethics, integrity, justice, and fairness and expects the same of others;

b. protects the rights and appropriate confidentiality of students and staff;

c. behaves in a trustworthy manner, using professional influence and authority to enhance education and the common good.

D. Element B—Examining Personal Values and Beliefs. Leaders demonstrate their commitment to examine personal assumptions, values, beliefs, and practices in service of a shared vision and goals for student learning.

1. Indicators. A leader:

a. demonstrates respect for the inherent dignity and worth of each individual;

b. models respect for diverse community stakeholders and treats them equitably;

c. demonstrates respect for diversity by developing cultural competency skills and equitable practices;

d. assesses own personal assumptions, values, beliefs, and practices that guide improvement of student learning;

e. uses a variety of strategies to lead others in safely examining deeply held assumptions and beliefs that may conflict with vision and goals;

f. respectfully challenges and works to change assumptions and beliefs that negatively affect students, educational environments, and every student learning.

E. Element C—Maintaining High Standards for Self and Others. Leaders perform the work required for high levels of personal and organizational performance, including acquiring new capacities needed to fulfill responsibilities, particularly for high-stakes accountability.

1. Indicators. A leader:

a. reflects on own work, analyzes strengths and weaknesses, and establishes goals for professional growth;

b. models lifelong learning by continually deepening understanding and practice related to content, standards, assessment, data, teacher support, evaluation, and professional development strategies;

c. develops and uses understanding of educational policies such as accountability to avoid expedient, inequitable, or unproven approaches that meet short-term goals (such as raising test scores);

d. helps educators and the community understand and focus on vision and goals for students within political conflicts over educational purposes and methods;

e. sustains personal motivation, optimism, commitment, energy, and health by balancing professional and personal responsibilities and encouraging similar actions for others.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17 and R.S.17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2248 (October 2010), repromulgated LR 37:865 (March 2011).

§313. Performance Expectation 6: The Education System

A. Education leaders ensure the success of all students by influencing interrelated systems of political, social, economic, legal, and cultural contexts affecting education to advocate for their teachers' and students' needs.

1. Dispositions Exemplified in Expectation 6. The education leader believes in, values, and is committed to:

a. advocate for children and education;

b. influence policies;

c. uphold and improve laws and regulations;

d. eliminate barriers to achievement;

e. build on diverse social and cultural assets.

B. Narrative

1. Leaders understand that public schools belong to the public and contribute to the public good. They see schools and districts as part of larger local, state, and federal systems that support success of every student, while increasing equity and social justice. Leaders see education as an open system in which policies, goals, resources, and ownership cross traditional ideas about organizational boundaries of schools or districts. Education leaders advocate for education and students in professional, social, political, economic, and other arenas. They recognize how principles and structures of governance affect federal, state, and local policies and work to influence and interpret changing norms and policies to benefit all students.

2. Professional relationships with a range of stakeholders and policymakers enable leaders to identify, respond to, and influence issues, public awareness, and policies. For example, local elections affect education boards and bond results, in turn affecting approaches and resources for student success. Educators who participate in the broader system strive to provide information and engage constituents with data to sustain progress and address needs. Education leaders in a variety of roles contribute special skills and insights to the legal, economic, political, and social well-being of educational organizations and environments.

C. Element A—Exerting Professional Influence. Leaders improve the broader political, social, economic, legal, and cultural context of education for all students and families through active participation and exerting professional influence in the local community and the larger educational policy environment.

1. Indicators. A leader:

a. facilitates constructive discussions with the public about federal, state, and local laws, policies, regulations, and statutory requirements affecting continuous improvement of educational programs and outcomes;

b. actively develops relationships with a range of stakeholders and policymakers to identify, respond to, and influence issues, trends, and potential changes that affect the context and conduct of education;

c. advocates for equity and adequacy in providing for students' and families' educational, physical, emotional, social, cultural, legal, and economic needs, so every student can meet educational expectations and policy goals.

D. Element B—Contributing to the Educational Policy Environment. Leaders contribute to policies and political support for excellence and equity in education.

1. Indicators. A leader:

- a. operates consistently to uphold and influence federal, state, and local laws, policies, regulations, and statutory requirements in support of every student learning;
- b. collects and accurately communicates data about educational performance in a clear and timely way, relating specifics about the local context to improve policies and inform progressive political debates;
- c. communicates effectively with key decision makers in the community and in broader political contexts to improve public understanding of federal, state, and local laws, policies, regulations, and statutory requirements;
- d. advocates for increased support of excellence and equity in education.

E. Element C—Policy Engagement. Working with policymakers informs and improves education policymaking and effectiveness of the public's efforts to improve education.

- 1. Indicators. A leader:
 - a. builds strong relationships with the school board, district and state education leaders, and policy actors to inform and influence policies and policymakers in the service of children and families;
 - b. supports public policies that provide for present and future needs of children and families and improve equity and excellence in education;
 - c. advocates for public policies that ensure appropriate and equitable human and fiscal resources and improve student learning;
 - d. works with community leaders to collect and analyze data on economic, social, and other emerging issues that impact district and school planning, programs, and structures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17 and R.S.17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2249 (October 2010). repromulgated LR 37:866 (March 2011).

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RULE

Board of Elementary and Secondary Education

Bulletin 126—Charter Schools
(LAC 28:CXXXIX.Chapters 1-5 and 9-31)

In accordance with R.S. 49:950, et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 126—Charter Schools*: Chapters 1 - 35. The update will amend the Bulletin to bring it into compliance with updates made to law. The update will enhance the current charter application process to require that the due diligence review include an examination of nonprofit and management organization performance, including the performance of schools operated within the state that have closed. Additionally, there will be a set of required timelines for the voluntary relinquishment of charter schools and possible penalties for not adhering to these timelines. Charter schools will also be required to notify the board when a contract with a management

organization is terminated and provide a plan for the continued operation of the school. If such a plan is deemed inadequate, the Recovery School District can be given interim authority to operate the school. Failure to adhere to the requirements may lead to the non-profit board being disqualified from operating another charter school in Louisiana for up to five years. Lastly, it will require board approval for changes in over 60 percent of a charter school board of directors as material amendments and require that the charter school notify the board of any non-material amendments made to the charter.

**Title 28
EDUCATION**

Part CXXXIX. Bulletin 126—Charter Schools

Chapter 1. General Provisions

§103. Definitions

- A. - E. ...
- F. *Management Organization*—an organization contracted by the charter operator to directly manage a charter school.
- G. *Charter School*—an independent public school that provides a program of elementary and/or secondary education established pursuant to and in accordance with the provisions of the Louisiana Charter School Law to provide a learning environment that will improve pupil achievement.
- H. *Charter School Application*—the proposal submitted to BESE, which includes but is not limited to, responses to questions concerning a charter school's education program; governance, leadership, and management; financial plan; and facilities.
- I. *Charter School Law*—Louisiana laws, R.S. 17:3971 et seq., governing the operation of a charter school.
- J. *Chartering Authority*—a local school board or the State Board of Elementary and Secondary Education.
- K. *Core Subject*—core subject shall include those subjects defined as core subjects in Bulletin 741.
- L. *Department of Education* or *LDE*—the Louisiana Department of Education.
- M. *Department of Education Office of Parental Options* or *OPO*—the unit within the Department of Education responsible for the administration of the state charter school program and for providing oversight of the operation of charter schools chartered by BESE.
- N. *Hearing Officer*—the individual assigned by BESE to perform adjudicatory functions at charter school revocation hearings.
- O. *Local School Board*—any city, parish, or other local public school board.
- P. *Public Service Organization*—any community-based group of 50 or more persons incorporated under the laws of this state that meets all of the following requirements:
 - 1. has a charitable, eleemosynary, or philanthropic purpose; and is qualified as a tax-exempt organization under Section 501(c) of the United States Internal Revenue Code and is organized for a public purpose.
- Q. *State Superintendent*—the Superintendent of Education, who is the chief administrative officer of the Louisiana Department of Education, and who shall administer, coordinate, and supervise the activities of the department in accordance with law, regulation, and policy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3973.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1357 (July 2008), amended LR 37:867 (March 2011).

§109. Limit on the Number of Charter Schools

Repealed.

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), repealed LR 37:868 (March 2011).

Chapter 3. Charter School Authorizers

§303. BESE Authorizing Responsibilities

A. - A.1. ...

2. to review each proposed charter in a timely manner to determine whether each charter school application complies with the charter school law and this bulletin and whether the application is valid, complete, financially well-structured, 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, and offers potential for fulfilling the purposes of the charter school law. BESE shall engage in an application review process that complies with the latest Principles and Standards for Quality Charter School Authorizing, as promulgated by the National Association of Charter School Authorizers, and shall provide for an independent evaluation of the charter proposal by a third party with educational, organizational, legal, and financial expertise.

3. - 6. ...

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 37:868 (March 2011).

§306. Local School Board Authorizing Responsibilities

A. Local school boards, as the authorizer of Type 1 and Type 3 charter schools, have the following authorizing responsibilities:

1. except as otherwise provided herein relating to local school systems in academic crisis, to review and formally act upon each charter proposal within 90 days of its submission and in the order in which submitted In conducting such a review, the local school board shall 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, and whether it offers potential for fulfilling the purposes of the law;

2. engage in a transparent application review process that complies with the latest Principles and Standards for Quality Charter School Authorizing, as promulgated by the National Association of Charter School Authorizers, and shall provide for an independent evaluation of the charter proposal by a third party with educational, organizational, legal, and financial expertise;

3. make public through its website, and in printed form upon request, the guidelines for submitting a charter proposal, all forms required for submission of a charter proposal, the timelines established for accepting and

reviewing charter proposals, the process that will be used to review charter proposals submitted to the board, and the name and contact information for a primary point of contact for charter proposals;

4. prior to approving a charter for a Type 1 or Type 3 school, to hold a public meeting for the purpose of considering the proposal and receiving public input. Such meeting shall be held after reasonable efforts have been made by the local school board to notify the public of the meeting and its content.

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 37:868 (March 2011).

§307. Local School Board Duties

A. Local school boards have the following duties relating to charter schools:

1. to report any charter entered into to BESE within two business days following the approval; and to report the number of schools chartered, the status of those schools, and any recommendations relating to the charter school program to BESE no later than July 1 of each year;

2. provide each charter school with the criteria and procedures that will be used when considering whether to renew a school's charter;

3. to notify the chartering group in writing of any decisions made relative to the renewal or nonrenewal of a school's charter not later than January 31 of the year in which the charter would expire. A notification that a charter will not be renewed shall include written explanation of the reasons for such non-renewal;

4. to make available to chartering groups any vacant school facilities or any facility slated to be vacant for lease or purchase at up to fair market value. In the case of a Type 2 charter school created as a result of a conversion, the facility and all property within the existing school shall also be made available to that chartering group In return for the use of the facility and its contents, the chartering group shall pay a proportionate share of the local school board's bonded indebtedness to be calculated in the same manner as set for in R.S. 17:1990(C)(2)(a)(i). If such facilities were constructed at no cost to the local school board, then such facilities, including all equipment, books, instructional materials, and furniture within such facilities, shall be provided to the charter school at no cost.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, R.S. 17:3982, and R.S. 17:3983.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1359 (July 2008), amended LR 37:868 (March 2010).

Chapter 5. Charter School Application and Approval Process

§503. Eligibility to Apply for a Type 2 Charter School

A. - A.5.b. ...

c. the local school board has made no final decision within 90 days after the submission of a proposal; and

A.6. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10). R.S. 17:3973, R.S. 17:3981, R.S. 17:3982, R.S. 17:3983, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1360 (July 2008), amended LR 37:868 (March 2011).

§507. Existing Public Schools Converting to Charter Schools

A. Prior to applying for a Type 2 charter school, which proposes to be a school converted from a preexisting public school to a charter school, BESE shall require an applicant to receive approval from the professional faculty and staff of the pre-existing school and the parents or guardians of children enrolled in the school.

B. Prior to applying for a Type 3, or Type 4 charter school, which proposes to be a school converted from a preexisting public school to a charter school, the chartering authority may require an applicant to receive approval from the professional faculty and staff of the pre-existing school and the parents or guardians of children enrolled in the school.

C. Approval of the professional faculty and staff requires a favorable vote of the majority of the faculty and staff who are certified by BESE and who were employed at the pre-existing school. The number needed for approval shall be determined by the number of professional faculty and staff assigned to the pre-existing school on October 1 preceding the election.

1. An election must be held for the purpose of voting to convert a preexisting public school to a charter school.

2. Employees eligible to vote in an election are members of the faculty and staff who are employed at the pre-existing school and who are certified by BESE.

3. Each eligible employee may cast only one vote.

4. The election must be held by secret ballot.

D. Approval by the parents or guardians requires a favorable vote of the majority of the voting parents or guardians of pupils enrolled in the school.

1. An election must be held for the purpose of voting to convert a pre-existing public school to a charter school.

2. The number of votes cast by the parents or guardians in an election must equal at least 50 percent of the number of students enrolled in the school at the time of the election.

3. Only one vote may be cast by one parent or guardian for each student enrolled in the school at the time of the election.

4. The election must be held by secret ballot.

E. An election of the professional faculty and staff or of the parents and guardians may be repeated in any school for approval of the same or a different charter proposal; however, such an election may not occur more than once in any school year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3973, and R.S. 17:3983.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1361 (July 2008), amended LR 37: 869 (March 2011).

§512. Application Process for Locally Authorized Charter Schools

A. Application Cycle

1. A local school board may accept charter school proposals until February 28 of each year and shall provide notification of its final decision to the chartering group. Notifications of charter proposals denied shall include written explanation of the reasons for such denial.

2. If the local school board does not reach a final decision within 90 days after the submission of the proposal,

the chartering group may submit its proposal to BESE for its review as a Type 2 charter proposal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, R.S. 17:3981, and R.S. 17:3983.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 37:869 (March 2011).

§513. Stages of Application Cycle for BESE- Authorized Charter Schools

A. - C. ...

D. Due Diligence Review. A due diligence review shall be performed on each charter school application/applicant. It may include, but not be limited to, background and reference checks of nonprofit corporation board members and individuals and agencies associated with the charter application; analysis of school performance and nonprofit corporation and management company performance, and performance associated with charter schools previously operated within the state that have since closed; and school site visits for existing operators.

E. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) and R.S. 17:3981.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1361 (July 2008), amended LR 37:869 (March 2011).

§515. Charter School Application Components

A. The BESE charter school application shall be prepared as a request for applications. Each request for applications shall consist of sections that provide applicants with information on charter schools in Louisiana, an explanation of the application process and timelines, charter school application questions, and any other information which is necessary for an applicant to be able to respond to the charter application questions.

B. All BESE requests for applications must be approved by BESE prior to the release of the request. In cases of a Type 5 charter operator voluntarily relinquishing its charter, the state superintendent of education may issue an emergency request for applications and BESE shall be notified of such action within two business days.

C. The charter school application questions contained in the BESE request for applications shall consist of questions in the following areas: executive summary, education program, governance, leadership and management, financial plan, and facilities.

D. The charter school application questions for all types of charter schools shall address the following:

1. a statement of the school's role, scope, and mission;

2. 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;

3. 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;

a. beginning with the 2011-2012 school year, 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;

4. a description of the school's recruitment, enrollment, and admission process;

5. a financial and accounting plan sufficient to permit a governmental audit;

6. a description of how the proposed charter school fulfills one or more of the purposes specified in the charter school law and this bulletin;

7. a description of the education program offered by the school and how that program will meet the needs of the at-risk pupils to be served, including a discussion of the school's proposed curriculum;

8. a description of how the charter school will meet the needs of students with exceptionalities;

9. the specific academic and other educational results to be achieved, the timelines for such achievement, and how results will be measured and assessed;

10. 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;

11. the organizational, governance, and operational structure of the school, including its policies regarding its compliance with applicable public body laws;

12. policies, programs, and practices to ensure parental involvement;

13. staffing plan, including the number of teachers and employees;

14. personnel policies and employment practices applicable to the school's officers and employees;

15. manner in which teachers and other school employees will be evaluated;

16. school rules and regulations applicable to pupils, including disciplinary policies and procedures, that incorporate research-based discipline practices, such as positive behavior interventions and supports, restorative justice principles in accordance with R.S. 17:252.;

17. 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;

18. management and accounting practices to be employed;

19. provisions regarding liability issues;

20. types and amounts of insurance coverage provided;

21. a requirement that curriculum shall be focused on the intellectual domain with intellectual development defined as acquisition of discrete technical and academic skills;

22. a requirement that charter schools regularly assess the academic progress of their pupils, including the participation of such pupils in the state testing programs, and the sharing of such information with parents;

23. a requirement that a pupil shall have a mastery of grade-appropriate skills before the pupil can be recommended for promotion or promoted;

24. provisions regarding the safety and security of the school;

25. provisions regarding electronic communications by an employee of the charter school to a student enrolled at the charter school;

26. provisions regarding the inspection and operation of all fire prevention and safety equipment at the school; and

27. a plan for collecting data in accordance with R.S. 17:3911.

E. 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 §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 37:869 (March 2011).

§517. Consideration of Charter Applications and Awarding of Charters by BESE

A. - B. ...

C. BESE shall carefully review each Type 2, Type 4, and Type 5 charter school application it receives and may approve a charter application only after it has made a specific determination that the proposed school will be operated in compliance with all applicable state and federal laws, rules, and regulations; that the accounting and financial practices to be used are sound and in accordance with generally accepted standards for similar entities; and that the educational program to be offered will comply with all requirements of the charter school law and be based on generally accepted education research findings applicable to the pupils to be served, including but not limited to school discipline practices and policies that incorporate positive behavior interventions and supports, restorative justice, and other research-based discipline practices and classroom management strategies and otherwise conform to the other model master discipline plan required in accordance with R.S. 17:252.

D. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3983.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1363 (July 2008), amended LR 37:870 (March 2011).

§518. BESE Pre-Opening Procedures Following Approval

A. Following charter application approval by BESE, approved nonprofit corporations must complete pre-opening requirements approved by BESE prior to executing a charter contract and prior to opening a school.

B. The pre-opening requirements of BESE approved charter schools shall be developed by the Department of Education, Office of Parental Options and presented for BESE's approval.

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 37:870 (March 2011).

§519. Pre-Opening Procedures Following Approval Repealed.

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), repealed LR 37:870 (March 2011).

Chapter 9. Opening of Charter School

§901. Timeline for Charter School Opening

A. A charter school shall begin operation by not later than 24 months after the final approval of the charter, unless

such charter school is engaged in desegregation compliance issues and, therefore, must begin operation by not later than 36 months.

B. If a charter school fails to begin operation within the time periods set forth in §901.A, the charter for that school shall be automatically revoked although a new charter may be proposed in a subsequent application cycle.

C. A charter school, once approved, may begin operation only in July, August, or September of a given year.

D. A charter school 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 37:870 (March 2011).

Chapter 11. Ongoing Review of Charter Schools

§1101. Charter School Evaluation

A. - B. ...

C. BESE shall receive a report on the review of Type 2, Type 4, and Type 5 charter schools in 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.

a. 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:

- i. the charter school be placed under a Memorandum of Understanding (MOU) that outlines specific recommendations for improving performance; or
- ii. revocation.

D. - D.1. ...

2. Charter schools are required to administer all state assessments and are subject to the Louisiana School and District Accountability System. The evaluation of a charter school's performance in its early years differs from the evaluation of existing public schools because the data necessary for certain types of accountability determinations to be made does not yet exist. However, data produced in a charter school's first years of existence is used in a manner that enables chartering authorities to track student performance by the assignment of an assessment index. An assessment index represents student performance on state assessments, as opposed to student performance on state assessments combined with other data like attendance and dropout rates. Each charter school will receive an assessment index until sufficient data exists for the school to receive a school performance score (SPS). Each charter school will receive its assessment index or school performance score (SPS), as applicable, when scores are released statewide.

D.3. - E. ...

1. Charter schools are required to engage in financial practices, financial reporting, and financial audits as set forth in charter school law, this bulletin, and the charter. The requirements imposed by law, regulation, and contract ensure the proper use of public funds and the successful fiscal operation of the charter school.

E.2. - 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 37:871 (March 2011).

Chapter 13. Charter Term

§1305. Fourth Year Review of Charter Schools on

Contract Probation

A. A charter school granted a one-year extension and placed on probation after its third year of operation pursuant to §1303.B.2 shall comply with all conditions of probation established by BESE and the Department of Education, Office of Parental Options.

A.1. - B. ...

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 37:871 (March 2011).

Chapter 15. Charter Renewal

§1501. Renewal of Charter

A. At the conclusion of a charter school's fifth year of operation and the expiration of its initial charter contract, a charter operator no longer has a continuing right to operate a charter school.

B. A charter school may apply for a renewal of its charter in compliance with processes and timelines established by its authorizer.

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 pupils 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, R.S. 17:3981, and R.S. 17:3983.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 37:871 (March 2011).

§1502. BESE Processes for Charter Renewal

A. For BESE-authorized charters, The Department of Education Office of Parental Options shall make a recommendation to BESE as to whether a charter renewal application should be approved.

B. A BESE-authorized charter school may be renewed at the discretion of BESE if all requirements set forth in law and policy for the renewal of a charter have been met.

C. The process for renewing a school charter shall be the same as for initial charter approval, with a thorough review by BESE of the charter school's operations, student academic performance, 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 37:871 (March 2011).

§1503. Charter Renewal Process and Timeline

A. - B. ...

1. Each charter school is required to make demonstrable improvements in student performance over the term of its charter contract.

a. BESE will rely on data from the state's assessment and accountability program as objective and verifiable measures of student achievement and school performance. Student performance is the primary indicator of school quality; therefore, BESE will heavily factor each charter school's student performance data in all renewal decisions.

B.2. - 4. ...

5. A BESE-authorized charter school receiving an academically unacceptable performance label based on performance on the state's assessment and accountability program based on year four test data (or the year prior to the submission of a renewal application for subsequent renewals) will not be eligible for renewal, unless one of these conditions are met:

B.5.a. - C. ...

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 evaluation financial performance indicator standards shall be measured as follows.

* * *

2. - 3. ...

4. 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.

5. BESE Standards for Financial Performance

a. BESE will reduce the renewal term by a year for any charter school otherwise recommended for renewal in any of the following instances, but no term shall be less than three years:

b. a charter school that is not current in all financial reporting at the time of its renewal application or at the time of the department's renewal recommendation;

c. a charter school that has failed to submit at least half of its required financial reports timely or sufficiently in the 12 months immediately preceding the department's renewal recommendation to BESE;

d. a charter school with a "major finding" in either student count audit or financial audit in the most recent reporting period; or

e. a charter school projecting a deficit in its most recent year end general fund balance.

6. 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. - D.3. ...

E. Initial Renewal for BESE-Authorized Charter Schools

1. - 4. ...

F. Subsequent Renewal for BESE-Authorized Charter Schools

1. - 5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981 and R.S. 17:3992.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:479 (March 2010), amended LR 37:871 (March 2011).

Chapter 17. Revocation

§1701. Reasons for Revocation

A. An authorizer may revoke a school's charter any time prior to the expiration of a charter operator's five-year term following initial approval or prior to the expiration of its subsequent renewal, if such is granted pursuant to Chapter 15 of this bulletin, upon a determination that the charter school or its officers or employees did any of the following:

1. committed a material violation of any of the conditions, standards, or procedures provided for in the approved charter;

2. failed to meet or pursue within the agreed timelines any of the academic and other educational results specified in the approved charter;

3. failed to meet generally accepted accounting standards of fiscal management;

4. violated any provision of law or BESE policy applicable to a charter school, its officers, or employees.

B. BESE may also revoke a schools charter if:

1. the health, safety, and welfare of students is threatened;

2. failed to meet the minimum standards for continued operation pursuant to R.S. 17:10.5, after four years of operation; or

3. any other reasons for revocation listed as such in a charter school's charter contract.

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 34:1368 (July 2008), amended LR 37:872 (March 2011).

§1703. Revocation Proceedings

A. Recommendation to Revoke Charter for BESE-Authorized Charter Schools

1. - 4. ...

B. Revocation Hearing for BESE-Authorized Charter Schools

1. - 2. ...

3. Following the Department of Education's recommendation to revoke a charter, BESE shall determine if it will commence a revocation proceeding.

C. Hearing Officer for BESE-Authorized Charter Schools

1. - 2. ...

D. Revocation Hearing Notice for BESE-Authorized Charter Schools

1. - 5. ...

E. Issuance of Subpoenas for BESE-Authorized Charter Schools

1. - 4. ...

F. Presentation and Evaluation of Evidence at Revocation Hearing for BESE-Authorized Charter Schools

F.1. - G. ...

1. A charter may be revoked upon an affirmative vote of six members of BESE or by an affirmative vote of at least a majority of the local board membership.

2. - 4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) and R.S. 17:3981.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1368 (July 2008), amended LR 37:872 (March 2011).

Chapter 18. Voluntary Relinquishment of a BESE-Authorized Charter

§1801. Voluntary Relinquishment of a BESE-Authorized Charter

A. If the operator 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. Failure to relinquish a charter at least 90 days prior to the beginning of the next school year may result in BESE declining to accept a charter application submitted by that operator to BESE for up to five years. If at any time during this period, members of such charter operator's board form a majority of board membership for a different charter operator, BESE may decline to accept a charter application submitted by such charter operator.

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 37:873 (March 2011).

Chapter 19. Amendments to BESE-Authorized Charters

§1903. Material Amendments for BESE-Authorized Charter Schools

A. - A.12. ...

13. change in membership of the charter operator's board of directors that exceeds 60 percent or more of its members within any six month period; and

14. any changes not specifically identified as a non-material amendment.

B. ...

C. The charter operator shall submit a request for a material amendment to its charter in compliance with all timelines and pursuant to all guidance, forms, and/or applications developed and set forth by the Department of Education, Office of Parental Options.

D. The Department of Education's Office of Parental Options shall make recommendations to BESE on each material amendment request it receives from a charter operator.

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).

§1905. Non-Material Amendments for BESE-Authorized Charter Schools

A. - A.2. ...

3. amendments to the charter operator's by-laws; and

4. changes in any option expressed in the charter contract exhibits with respect to Teachers' Retirement System of Louisiana.

B. A non-material amendment will be effective following approval by the board of directors of the charter school.

C. The charter operator shall provide BESE with written notification of a non-material amendment to its charter within five days of board approval in compliance with all requirements set forth by the Department of Education, Office of Parental Options. Such notification shall be

accompanied by a resolution of the school's board of directors, signed by the board's president.

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 34:1370 (July 2008), amended LR 37:873 (March 2011).

§1907. Other Charter Amendments for BESE-Authorized Charter Schools

A. The charter operator shall provide BESE with written notification of all charter amendments not provided in §1703 and §1705 in compliance with all requirements set forth by the Department of Education, Office of Parental Options.

B. The Department of Education, Office of Parental Options shall determine if the reported amendment requires BESE approval of the amendment pursuant to §1703.

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 34:1370 (July 2008), amended LR 37:873 (March 2011).

Chapter 21. Charter School Governance

§2101. Board of Director Composition

A. The members of the board of directors shall receive no compensation other than reimbursement of actual expenses incurred while fulfilling duties as a member of such a board.

B. A charter school shall be prohibited from employing, in any manner, any member of the governing or management board of such school.

C. Not more than 20 percent of the members of any governing or management board of a charter school shall be members of the same immediate family. Members of the same immediate family shall include a board member and any other board members to whom he is related as defined in R.S. 42:1102(13) and any other board members to whom any of them are so related.

D. Board of Director Composition for BESE-Authorized Charter Schools

1. The board of directors of each charter operator shall consist of no fewer than seven members. Each charter operator shall be in full compliance with the provisions of this Subsection no later than January 1, 2009.

2. The board of directors of each charter operator should consist of members with a diverse set of professional skills and practical work experience in the areas of education, public/non-profit and/or for-profit administration or operations, community development, finance, and law.

3. The board of directors of each charter operator should be representative of the community in which the charter school is located and no fewer than 60 percent of its members shall reside in the community in which the charter school is located. Community, for the purposes of this paragraph, shall consist of the parish in which the school is located and immediate neighboring parishes and, for Type 2 charter schools, any parish that is included in the charter school's attendance zone.

4. The board of directors of each charter operator shall consist of no more than one person from the same immediate family, as defined by the Louisiana Code of Governmental Ethics.

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 34:1370 (July 2008), amended LR 37:873 (March 2011).

§2103. Board Member Responsibilities

A. - F. ...

G. Each member of the governing authority or management board of a charter school shall annually file a financial statement in accordance with R.S. 42:1124.3

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 34:1370 (July 2008) amended LR 37:874 (March 2011).

§2105. Board Member Training for BESE-Authorized Charter Schools

A. The board of directors of each charter operator shall develop an annual training schedule with respect to the operation of a non-profit organization and the management of a charter school in compliance with requirements set forth by the Department of Education, Office of Parental Options.

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 34:1371 (July 2008). Amended LR 37:874 (March 2011).

§2107. Prohibitions

A. - E. ...

F. A charter school shall not be supported by or affiliated with any religion or religious organization or institution; however, a charter school may receive from any such organization or institution support or student services including but not limited to mentoring, volunteering, fund-raising, or tutoring.

G. - J. ...

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 34:1371 (July 2008), amended LR 37:874 (March 2011).

Chapter 23. Charter School Funding

§2301. State Funding

A. The per pupil amount provided to a Type 1, 2, 3, or 4 charter school shall be computed at least annually and shall be equal to no less than the per pupil amount received by the school district in which the charter school is located from the following.

B. Initial allocation of the per pupil amount each year shall be based on estimates provided by the Louisiana Department of Education using the most recent local revenue data and projected pupil counts available. Allocations may be adjusted during the year to reflect actual pupil counts.

C. For the purposes of funding, each Type 1, Type 3, and Type 4 charter school shall be considered an approved public school of the local school board entering into the charter agreement and shall receive a per pupil amount each year from the local school board based on the October 1 membership count of the charter school and any other membership count authorized pursuant to the Minimum Foundation Program formula adopted each year.

D. Type 5 charter schools shall receive a per pupil amount each year pursuant to formulas developed by the RSD which may include differentiated funding for certain students, including students identified as being eligible for

special education services, and based on the October 1 membership count of the charter school and any other membership count authorized pursuant to the Minimum Foundation Program formula adopted each year.

E. Type 2 charter schools approved prior to July 1, 2008 shall receive a per pupil amount from the Louisiana Department of Education each year based on the October 1 membership count of the charter school and using state funds specifically provided for this purpose. In order to provide for adjustments in allocations made to Type 2 charter schools as a result of changes in enrollment, BESE may provide annually for a February pupil membership count to reflect any changes in pupil enrollment that may occur after October 1 of each year. Type 2 charter schools authorized by the State Board of Elementary and Secondary Education after July 1, 2008, shall receive a per pupil amount each year as provided in the Minimum Foundation Program approved formula.

1. Any allocation adjustment made pursuant to this Paragraph shall not be retroactive and shall be applicable for the period from March 1 through the end of the school year. The provisions of this Paragraph relative to an allocation adjustment shall not be applicable to any Type 2 charter school that has had an increase or decrease in student enrollment of 5 percent or less in any school year for which the February membership count occurs.

F. A charter authority may annually charge each charter school it authorizes a fee in an amount equal to two percent of the per pupil allocation that is received by a charter school for administrative overhead costs incurred by the chartering authority for considering the charter application and any amendment thereto, providing monitoring and oversight of the school, collecting and analyzing data of the school, and for reporting on school performance. Such fee amount shall be withheld from the per pupil amount in monthly increments and shall not be applicable to any federal money or grants received by the school. Administrative overhead costs shall not include any cost incurred by the charter authority to provide purchased services to the charter school.

1. At least 30 days prior to the beginning of each fiscal year, each charter school shall be provided by its chartering authority with a projected budget detailing anticipated administrative overhead costs and planned uses for fees charged for such costs.

2. By no later than 90 days following the end of each fiscal year, each charter school shall be provided by its chartering authority or the Recovery School District, if applicable, an itemized accounting of the actual cost of each purchased service provided to the charter school.

G. A charter school may contract with the chartering authority, or with the Recovery School District for a Type 5 charter school, for the direct purchase of specific services in addition to those include in administrative overhead costs, included by not limited to food services, special education services, transportation services, custodial and maintenance services, media services, technology services, library services, health services, and health benefits for active and retired employees. Such services shall be provided to the charter school at the actual costs incurred by the chartering authority or Recovery School District as applicable. The amount paid by a charter school for such purchased services shall be in accordance with a written agreement entered into

for this purpose by the charter school and the chartering authority or the Recovery School District as applicable. Such agreement shall be negotiated and executed prior to the beginning of each school year. Absent such an agreement as provided by this Section, the chartering authority or, if applicable, the Recovery School District, shall have no authority to withhold from the charter school any funds relative to providing such services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3995.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1371 (July 2008), amended LR 37:874 (March 2011).

Chapter 25. Charter School Fiscal Responsibilities

§2505. Financial Reporting

A. Each charter operator shall submit quarterly reports to the department listing year-to-date revenues and expenditures through that quarter and budgeted revenues and expenditures for the fiscal year, using forms provided by the department and on dates specified by the department as set forth below.

Due Date	Financial Report
July 31	Annual Operating Budget Includes actual data for the prior fiscal year ending June 30 along with budgeted data for the current fiscal year starting July 1.
October 31	First Quarter Financial Report Includes budgeted data for the fiscal year along with the YTD actual data through September 30.
January 31	Second quarter Financial Report Includes budgeted data for the fiscal year along with the YTD actual data through September 30.
April 30	Third Quarter Financial Report Includes budgeted data for the fiscal Year along with the YTD actual data through March 31.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3995.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1373 (July 2008), amended LR 37:875 (March 2011).

Chapter 27. Charter School Recruitment and Enrollment

§2701. Students Eligible to Attend

A. ...

B. Type 4 Charter Schools. Only students who would be eligible to attend a traditional public school operated by the local school board holding the Type 4 charter or students from the same areas as those permitted to attend the preexisting school, if a conversion charter, are eligible to attend a Type 4 charter school, unless an agreement with another city, parish, or other local school board is reached to allow students to attend the charter school.

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3973, R.S. 17:3981, R.S. 17:10.5, R.S. 17:10.7, and R.S. 17:1990.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1373 (July 2008), amended LR 37:875 (March 2011).

§2705. Admission Requirements

A. A charter school may have admission requirements that are consistent with the school's role, scope, and mission.

B. Admission requirements imposed by a school must be set forth in the charter school's approved charter and shall be specific and shall include a system for admission decisions which precludes exclusion of pupils based on race, religion, gender, ethnicity, national origin, intelligence level as ascertained by an intelligence quotient examination, or identification as a child with an exceptionality as defined in R.S. 17:1943(4). Such admission requirements may include, however, specific requirements related to a school's mission such as auditions for schools with a performing arts mission or achievement of a certain academic record for schools with a college preparatory mission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1374 (July 2008), amended LR 37:875 (March 2011).

§2711. Lottery Exemptions

A. ...

B. Students previously enrolled in the charter school and their siblings shall be exempt from a lottery, and shall maintain enrollment or be automatically admitted following the charter school's application period.

C. ...

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 34:1375 (July 2008), amended LR 37:875 (March 2011).

§2713. At-Risk Students

A. Except as otherwise provided by charter school law, Type 1 and Type 2 charter schools created as new schools shall maintain an at-risk student population percentage, based on the October 1 pupil membership count, that is equal to the percentage of students eligible for the federal free or reduced lunch program in the district in which the charter school is located or the average of districts from which students served by the charter school reside.

A.1. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) R.S. 17:3973, R.S. 17:3981, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1375 (July 2008), amended LR 37:875 (March 2011).

Chapter 29. Charter School Staff

§2905. Criminal History Review

A. - B.1. ...

2. Not later than 30 days after its being placed on file by the school, the charter operator shall submit a copy of the statement of approval to the Department of Education, Office of Parental Options.

C. - D.1. ...

2. Not later than 30 days after its being placed on file by the school, the charter operator shall submit a copy of any such statement of approval or written documentation from the court to the Department of Education, Office of Parental Options.

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 34:1375 (July 2008), amended LR 37:875 (March 2011).

§2907. Leave of Absence

A. Any employee of a local public school system shall, upon request, be granted a leave of absence in order to be employed in a charter school. The leave of absence shall not exceed three years.

1. The provisions of Paragraph A of this Section shall be in effect through June 30, 2010.

2. A leave of absence granted by a local school board pursuant to the provisions of this Section prior to July 1, 2010 shall continue to be governed by all applicable provisions of this Section.

B. - G. ...

H. The provisions of this Section shall not apply to employees of a Type 4 charter school, as such employees employed by a Type 4 charter school are employees of the local school board entering into the charter. The transfer of an employee of a local school board to a Type 4 charter school shall be governed by the transfer policy of the local school board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3997.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1376 (July 2008), amended LR 37:876 (March 2011).

**Chapter 31. Notification Requirements for BESE-
Authorized Charter Schools**

§3101. Required Notifications

A. The charter operator shall notify BESE and/or the Department of Education, Office of Parental Options of any conditions that may cause it to vary from the terms of its charter, state law, or BESE policy.

B. The charter operator shall notify BESE and/or the Department of Education, Office of Parental Options of any circumstance requiring the closure of the charter school including, but not limited to, a natural disaster, such as a hurricane, tornado, storm, flood or other weather related event; other extraordinary emergency; or destruction of or damage to the school facility.

C. The charter operator shall notify BESE and/or the Department of Education, Office of Parental Options of the arrest of any members of the charter school's board of directors, employees, contractors, subcontractors, or any person directly or indirectly employed by the charter operator for a crime listed in R.S. 15:587.1(C) or any crime related to the misappropriation of funds or theft.

D. The charter operator shall notify BESE and/or the Department of Education, Office of Parental Options of a default on any obligation, which shall include debts for which payments are past due by 60 days or more.

E. The charter operator shall notify BESE and/or the Department of Education, Office of Parental Options of any change in its standing with the Office of the Louisiana Secretary of State.

F. The charter operator shall immediately notify BESE and/or the Department of Education, Office of Parental Options if its enrollment decreases by 10 percent or more compared to the most recent pupil count submitted to the Department of Education and/or BESE.

G. If the charter operator has contracted with a management organization and such contract is terminated or

not renewed, it shall provide written notification to the Department of Education, Office of Parental Options within two business days stating the reasons for the termination of the relationship.

H. For a Type 5 charter school, the charter operator shall submit a formal plan for the continued operation of the school to the state superintendent of education within 10 days of written notification of the contract's termination. If no plan is received or the plan received is deemed inadequate by the state superintendent of education, the Recovery School District shall have interim authority to operate the school until the charter operator resubmits a plan deemed acceptable by the superintendent.

I. Failure of the board to notify the Office of Parental Options about loss of the management organization within two business days may result in BESE rendering the charter operator or a majority of its board members ineligible to operate a charter school for up to five years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) and R.S. 17:3981.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 37:876 (March 2011).

Catherine R. Pozniak
Executive Director

1103#026

RULE

Board of Elementary and Secondary Education

Bulletin 129—The Recovery School District
(LAC 28:CXLV.Chapters 3 and 5)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 129—The Recovery School District: Chapters 3 and 5*. The proposed policy aligns the Recovery School District with *Bulletin 741—Louisiana Handbook for School Administrators*, and outlines the fiscal and internal management of the Recovery School District (RSD).

Chapter 3 outlines the duties of state superintendent in the administration of the RSD, and that the state superintendent is subject to BESE's oversight in the administration of the RSD. The RSD is subject to the policies contained in *Bulletin 741—Louisiana Handbook for School Administrators (public schools)*. The RSD is allowed to deviate from such policies provided it obtains BESE approval.

Chapter 5 deals with failed schools and their transfer to the RSD. It provides that BESE shall make the final decision for the transfer of academically unacceptable public schools to the RSD and shall make the final decision on the operation of the school so transferred. Chapter 5 defines the criteria for local school districts to be declared academically in crisis and how the schools are to be transferred and operated by the RSD. The Chapter also outlines the return of schools to the Local Education Agency (LEA).

Title 28
EDUCATION

Part CXLV. Bulletin 129—The Recovery School District
Chapter 3. Overall Governance and Oversight
Structure

§301. Duties of the State Superintendent in the Administration of the RSD

A. The state superintendent shall serve as the RSD's governing authority, consistent with authority delegated by the Board of Elementary and Secondary Education (BESE) and statutory authority acknowledged by BESE. The state superintendent is subject to BESE's oversight of his administration of the RSD.

1. BESE's RSD Committee shall serve as the Board's lead group for oversight of the RSD.

B. The state superintendent shall employ/appoint and fix the salaries and duties of employees of the RSD, subject to applicable Civil Service laws, rules, and regulations, and other applicable laws, rules, regulations, and policies.

C. The state superintendent shall make recommendations to BESE for the approval of Type 5 charter schools, subject to the policies and processes approved by BESE.

D. As schools become eligible for transfer to the RSD, the state superintendent shall recommend to BESE the most appropriate mode of operating those schools.

E. As schools under RSD's jurisdiction become eligible for return to their local educational agency (LEA), the state superintendent shall recommend to BESE the most appropriate future path for those schools.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:10.5.A.(1), R.S. 17:10.7.A.(1), R.S. 17:1990.A.(2), R.S. 17:10.5.B, R.S. 17:10.5.C, R.S. 17:10.7.B, and R.S. 17:10.7.C.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 37:877 (March 2011).

§303. Appointment and Qualifications of the RSD Superintendent

A. The state superintendent shall appoint the RSD superintendent with prior approval of BESE.

B. The RSD superintendent shall possess the same qualifications as provided for a school system superintendent in BESE *Bulletin 746—Louisiana Standards for Certification of School Personnel*, as modified by the qualifications in *Bulletin 741—Louisiana Handbook for School Administrators*, at Section 505.B. However, the K-12 population level of *Bulletin 741's* §505.B need not be present within the RSD.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:10.5.A.(1), R.S. 17:10.7.A.(1), and R.S. 17:1990.A.(2).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 37:877 (March 2011).

§305. Duties of the RSD Superintendent

A. The RSD superintendent shall administer the RSD, subject to the authority of the state superintendent as governing authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:10.5.A.(1), R.S. 17:10.7.A.(1), and R.S. 17:1990.A.(2).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 37:877 (March 2011).

§307. Qualifications of Deputy Superintendents of the RSD

A. Deputy superintendents who supervise any part of the instructional program must meet the qualification standards set by *Bulletin 746—Louisiana Standards for Certification of School Personnel*.

B. Deputy superintendents in non-instructional areas, such as finance, management, facilities planning, and ancillary programs, must meet the qualification standards set for school system superintendents by *Bulletin 746—Louisiana Standards for Certification of School Personnel*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:10.5.A.(1), R.S. 17:10.7.A.(1), and R.S. 17:1990.A.(2).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 37:877 (March 2011).

§309. Advisory Council(s) to the State Superintendent

A. Statewide Council

1. Within 90 days after the final adoption of this Section, the state superintendent shall nominate, subject to BESE's approval, a list of four nominees to serve on the statewide RSD advisory council to the state superintendent. At least two of these nominees shall be members of a school advisory council, as described in §1505.C of this bulletin.

2. The purpose of the statewide RSD advisory council is to provide a vehicle to enhance two-way communication between the state superintendent and the community of stakeholders about the functioning of the RSD statewide. The state superintendent or his designee shall attend the council's meetings.

3. Once BESE has approved the membership of this advisory council, the council and the state superintendent or his designee shall meet at least three times a year. All such meetings shall be held in accordance with the state Open Meetings Law. These meetings shall be held in throughout the state.

4. Within 30 days after each meeting of this advisory council, the RSD shall post a summary of the meeting on the State Department of Education website, send a paper copy of the report to each school under the RSD's jurisdiction, and send an electronic copy to each BESE member and the BESE Executive Director.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:10.5.A.(1), R.S. 17:10.7.A.(1), and R.S. 17:1990.A.(2).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 37:877 (March 2011).

§311. Applicability of Provisions of Bulletin 741

A. RSD shall be subject to the policies contained in BESE *Bulletin 741—Louisiana Handbook for School Administrators [Public Schools]*, unless otherwise provided in this bulletin. *Bulletin 741* collects BESE policies that govern the operation of public elementary, middle, and secondary schools.

B. Should the RSD superintendent believe it appropriate to deviate from a policy within *Bulletin 741*, the RSD superintendent shall request that BESE grant it a waiver from that policy.

1. When the RSD requests that BESE waive a *Bulletin 741* policy, the RSD superintendent shall follow the procedure set forth in *Bulletin 741*, §345.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:10.5.A.(1), R.S. 17:10.7.A.(1), and R.S. 17:1990.A.(2).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 37:877 (March 2011).

Chapter 5. Failed Schools

§501. Transfer to the Recovery School District

A. A public school may be transferred to the jurisdiction of the RSD if it is determined, as defined by R.S. 17:10.6, to be either academically unacceptable or if it is determined to be in academically in crisis. BESE has established a uniform statewide program for school accountability in BESE *Bulletin 111—The Louisiana School District and State Accountability System*.

1. Academically Unacceptable. A public school determined to be academically unacceptable shall be designated as a failed school and may be transferred to the RSD subject to approval by BESE. The state superintendent will make a recommendation to BESE regarding the transfer of an academically unacceptable school to the RSD.

a. BESE may approve the transfer of an academically unacceptable school if the failed school meets one or more of the following criteria:

- i. the LEA fails to submit a reconstitution plan to BESE for approval; or
- ii. BESE finds the LEA's reconstitution plan unacceptable; or
- iii. the LEA fails to comply with the reconstitution plan approved by BESE; or
- iv. the school is labeled an academically unacceptable school for four consecutive years.

b. When the state superintendent makes a recommendation to BESE to transfer an academically unacceptable school to the jurisdiction of the RSD, he will propose performance objectives for the failed school designed to bring the failed school to an acceptable level of performance.

c. The state superintendent, in conjunction with the RSD, shall evaluate any public school deemed to be academically unacceptable to determine the best method to bring the school to an acceptable level of performance as determined by the statewide accountability plan. The state superintendent shall recommend to BESE any of the following methods for operating a school that has been deemed eligible for transferred to the RSD:

- i. the failed school may be operated:
 - (a) as a direct-run RSD school;
 - (b) as a charter school,
 - (c) as a university partnership; or
 - (d) through a management agreement with a management education management organization;
- ii. the RSD may enter into a Supervisory Memorandum of Understanding (MOU) with the LEA under the provisions enumerated in Section 503, "Conditional Transfer Using a Supervisory Memorandum of Understanding," below.

d. BESE shall make the final decision for the transfer of an academically unacceptable public school to the RSD and shall make the final decision on the appropriate method of operating the school as enumerated in Section A.1.c, above. BESE shall also make the final decision on the

performance objectives for the academically unacceptable school.

2. Academically in Crisis. A local school system in which more than 30 schools are academically unacceptable or more than 50 percent of its students attend schools that are academically unacceptable is academically in crisis. Pursuant to La. R.S. 17:10.7, a public school participating in a Spring cycle of student testing that had a baseline School Performance Score (SPS) below the state average as defined in BESE *Bulletin 111—The School, District, and State Accountability System*, §301, was within an LEA labeled *academically in crisis* as defined in R.S. 17:10.6; and was within an LEA with at least one school eligible for transfer to the RSD under R.S. 17:10.5, was designated as a failing school and was transferred to the RSD by operation of law.

a. The state superintendent, in conjunction with the RSD, evaluated the schools transferred to the RSD pursuant to La. R.S. 17:10.7 to determine the best of operation to bring the school to an acceptable level of performance. The state superintendent shall recommend to BESE a method of operating the schools transferred to the RSD. BESE shall make the final decision on the operation method of any school transferred to the RSD by operation of law.

b. Acceptable methods of operation for the failed schools include operating as:

- i. a direct-run RSD school;
- ii. a charter-operated school;
- iii. a university partnership school; or
- iv. an education management organization.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:10.5.A.(1), R.S. 17:10.7.A.(1), R.S. 17:1990.A.(2), R.S. 17:10.5.B, R.S. 17:10.6, and R.S. 17:10.7.B.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 37:878 (March 2011).

§503. Conditional Supervisory Memorandum of Understanding

A. As an alternative to a transfer of a failing school to the RSD under the provisions of R.S. 17:10.5, BESE may authorize a conditional transfer requiring the LEA to enter a legally-binding memorandum of understanding (MOU) between the RSD and the LEA. The MOU will define the performance objectives for LEA to implement to bring the failing school to acceptable level of performance.

B. Under the terms of the MOU, the LEA will continue to operate the failed school under the supervision of the RSD. In the event the LEA is unable to comply with the terms of the MOU, and/or the LEA fails to implement procedure that bring the school to acceptable levels of performance, then the failing school will be transferred to the RSD, pursuant to the terms of the MOU.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:10.5.A.(1), R.S. 17:10.5.B, R.S. 17:10.7.A.(1), and R.S. 17:1990.A.(2).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 37:878 (March 2011).

§505. Return of Schools to LEA

A. Schools transferred to the jurisdiction of RSD shall remain with the RSD for a period of not less than five years.

1. For a school transferred to the RSD pursuant to R.S. 17:10.5, the school may be returned to its original LEA based upon the RSD's report and recommendation to BESE. The RSD's report shall include the following:

RULE

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Dropout Prevention and Recovery (LAC 28: CXV.1118)

a. the status of the school, the nature of its faculty and administration, the demographics and size of the student body, its organizational and management structure, whether student academic performance has improved, the amount of any improvement, an explanation of why student academic performance has or has not improved, and to what extent performance targets were achieved;

b. the RSD report shall also include a recommendation to as to whether the school should:

- i. remain within the RSD in the same operational status;
- ii. remain within the RSD in a new operational status;
- iii. close, with the reasons why it should close; or
- iv. return to the original LEA, with proposed stipulations and conditions for the return;

c. BESE shall take action on the RSD's recommendation. If BESE determines that the school should continue to remain under the jurisdiction of—the RSD, the RSD shall maintain jurisdiction of the school for an additional five-year period, unless BESE specifies a shorter time.

2. For schools transferred to RSD pursuant to La. R.S. 17:10.7, schools may be returned to their original LEA based upon the RSD's report and recommendation to BESE. The RSD's report shall contain the following:

a. the status of the school, the nature of its faculty and administration, the demographics and size of the student body, its organizational and management structure, whether student academic performance has improved, the amount of any improvement, an explanation of why student academic performance has or has not improved, and to what extent performance targets were accomplished;

b. the RSD report shall include a recommendation as to whether-the school should:

- i. remain within the RSD in the same operational status;
- ii. remain within the RSD in a new operational status;
- iii. close with the reasons why it should close; or
- iv. return to the original, with proposed stipulations and conditions for the return.

c. before making a final decision BESE shall hold a public hearing in the jurisdiction of the original LEA relative to whether the schools should continue to remain within the RSD or should be returned to the LEA;

d. should BESE determine that a school or schools remain under the jurisdiction of the RSD, the school shall remain under the RSD's jurisdiction for an additional five-year period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A) (10), R.S. 17:10.5.A.(1), R.S. 17:10.7.A.(1), R.S. 17:1990.A.(2), R.S. 17:10.5.C, and R.S. 17:10.7.C.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 37:878 (March 2011).

Catherine R. Pozniak
Executive Director

1103#027

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*: §1118. Dropout Prevention and Recovery. The revision changes the percent of cohort graduation rate from 70 to 80 percent. Additionally, the policy requires LEAs to "post the four-year cohort graduation rate for each high school in the system and for the system as a whole on its internet website" and to "send a written notice to the parent or other legal guardian of each high school student the four-year cohort dropout rate of the school in which the student is enrolled and the number of students in the school identified as failing pursuant to the accountability system." This revision reflects the amendments R.S. 17:221.4 to Dropout Prevention and Recovery enacted by Act 557 (SB 753) of the 2010 Regular Session.

Title 28

EDUCATION

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

§1118. Dropout Prevention and Recovery

A. LEAs with a cohort graduation rate of less than 80 percent as determined by BESE shall identify specific methods of targeted interventions for dropout prevention and recovery that may include:

- 1. early intervention for students who are at risk of failing any ninth grade English or math class;
- 2. alternative programs designed to reengage dropouts;
- 3. increased availability of advanced placement courses;
- 4. comprehensive coaching for middle school students who are below grade level in reading and math;
- 5. teacher advisories such as the use of graduation coaches and other supports that are designed to specifically address the needs of youth most at risk of dropping out of school;
- 6. strategies specifically designed to improve the high school graduation rate of students at highest risk for dropping out, including but not limited to students who are two or more years below grade level, students with excessive absences, youth in the foster care system, pregnant and parenting youth, Limited English proficient students, and students with special education needs;
- 7. communicating with students and their parents or legal guardians about the availability of local after-school programs and the academic enrichment and other activities the programs offered;
- 8. opportunities for credit recovery;

9. opportunities to participate in the Jobs for America's Graduates program.

B. LEAs that fail to show a decline in their annual dropout rates shall prepare and submit each year to BESE a written report that documents:

1. the outcomes of the dropout prevention strategies to date at the school system level;

2. how the school system dropout prevention strategies and activities will be modified, based on the data.

C. Each LEA shall:

1. post the four-year cohort graduation rate for each high school in the system and for the system as a whole on its internet website;

2. send a written notice to the parent or other legal guardian of each high school student that contains the following information:

a. the four-year cohort dropout rate of the school in which the student is enrolled;

b. the retention rate by grade level for students enrolled in the school.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:221.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:642 (April 2009), amended LR 37:879 (March 2011).

Catherine R. Pozniak
Executive Director

1103#028

RULE

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Family and Consumer Sciences Education (LAC 28:CXV.2379)

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*: §2379. Family and Consumer Sciences Education. The amendment reflects the addition of Baking and Pastry Arts I and Baking and Pastry Arts II to the Family and Consumer Sciences course offerings. The action has been taken to update the Family and Consumer Sciences course offerings. In updating these course offerings students in the Culinary Arts career pathway will be provided the opportunity to concentrate on specialized techniques within the field of baking and pastry.

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EDUCATION

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

§2379. Family and Consumer Sciences Education

A. The Family and Consumer Sciences (FACS) Education course offerings shall be as follows.

Course Title(s)	Recommended Grade Level	Units
Exploratory FACS	7-8	-
Family and Consumer Sciences I	9-12	1
Family and Consumer Sciences II	10-12	1
Food Science	10-12	1
Adult Responsibilities	11-12	1/2
Child Development	10-12	1/2
Personal and Family Finance	10-12	1/2
Family Life Education	10-12	1/2
Clothing and Textiles	10-12	1/2
Housing and Interior Design	10-12	1/2
Nutrition and Food	10-12	1/2
Parenthood Education	11-12	1/2
Advanced Child Development*	10-12	1/2
Advanced Clothing and Textiles*	10-12	1/2
Advanced Nutrition and Food*	10-12	1/2
FACS Elective I, II	9-12	1/2-3
*The related beginning semester course is prerequisite to the advanced semester course.		
Occupational Courses		
Clothing and Textile Occupations I	11-12	1-3
Clothing and Textile Occupations II	12	1-3
Early Childhood Education I	11-12	1-3
Early Childhood Education II	12	1-3
Food Services I	11-12	1-3
Food Services II	11-12	1-3
Food Service Technician	11-12	1
Housing & Interior Design Occupations	11-12	1-3
ProStart I	11-12	1-3
ProStart II	12	1-3
Baking and Pastry Arts I	11-12	1-3
Baking and Pastry Arts II	12	1-3
Cooperative FACS Education	12	3

AUTHORITY NOTE: Promulgated in accordance R.S. 17:7; R.S. 17:24.4; R.S. 17:279.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1299 (June 2005), amended LR 33:278 (February 2007), LR 37:880 (March 2011).

Catherine R. Pozniak
Executive Director

1103#029

RULE

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Mental Health Professional Counselor (LAC 28:CXXXI.414)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice the Board of Elementary and Secondary Education has amended *Bulletin 746—Louisiana Standards for State Certification of School Personnel*: §414. Mental Health Professional Counselor. The policy revision provides for an ancillary mental health professional counselor certificate which will allow licensed psychologists, licensed professional counselors, licensed

social workers, and licensed marriage and family therapists to serve as mental health professional counselors in schools. Individuals have been serving in Louisiana schools as mental health counselors with no certification in that area.

Title 28

EDUCATION

Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel

Chapter 4. Ancillary School Service Certificates

§414. Mental Health Professional Counselor

A. Provisional Mental Health Professional Counselor Certificate—valid for two years.

1. Eligibility requirements:

a. hold current Louisiana licensure as a licensed professional counselor in Louisiana (LPC), in accordance with R.S. 37:1101 et seq.; or

b. hold a current Louisiana licensure as a licensed marriage and family therapist (MFT) in accordance with R.S. 37:1101 et seq.; or

c. hold a current Louisiana licensure as a Licensed clinical social worker (LCSW), in accordance with R.S. 37:2701 et seq.; or

d. hold a current Louisiana certification as a certified school psychologist, in accordance with R.S. 17:7.1(D); or current Louisiana licensure as a psychologist, in accordance with R.S. 37:2351 et seq.; and

e. have two years of mental health counseling experience or providing school psychological services or school social work services within the last five years working directly with children, as verified by a previous or current employer; and

f. have a written request from the Louisiana employing school system indicating that the person will be employed once the certification is granted.

B. Qualified Mental Health Professional Counselor

1. Eligibility requirements:

a. hold current Louisiana licensure as a Licensed professional counselor in Louisiana (LPC), in accordance with R.S. 37:1101 et seq.; or

b. hold a current Louisiana licensure as a licensed marriage and family therapist (LMFT) in accordance with R.S. 37:1101 et seq.; or

c. hold a current Louisiana licensure as a licensed clinical social worker (LCSW), in accordance with R.S. 37:2701 et seq.; or

d. hold a current Louisiana certification as a certified school psychologist, in accordance with R.S. 17:7.1(D); or current Louisiana licensure as a psychologist, in accordance with R.S. 37:2351 et seq.; and

e. have two years of experience as a provisional mental health professional counselor and the written request of the employing school district.

2. Renewal Guidelines

a. This certificate is valid provided the holder maintains current Louisiana licensure as a LPC, LMFT, LCSW, or psychologist, or holds a current Louisiana certification as a certified school psychologist. A worker who changes employing school systems must provide a copy of his/her current Louisiana license or certificate to serve as a mental health professional counselor.

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 37:881 (March 2011).

Catherine R. Pozniak
Executive Director

1103#030

RULE

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Middle School Specialty Area Endorsements (LAC 28:CXXXI.609)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 746—Louisiana Standards for State Certification of School Personnel*: §609. Requirements to add Middle School (Grades 4-8) Specialty Area Endorsement for English, Mathematics, Science, or Social Studies. The policy revision will allow candidates the option of completing six semester hours in reading or passing the Praxis Teaching Reading exam (#0204) to add-on middle grades: 4-8 subject areas to an existing early childhood, upper elementary/middle school, or special education teaching certificate. This revision in Bulletin 746 will allow more flexibility with the reading requirements for add-on certification purposes.

Title 28

EDUCATION

Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel

Chapter 6. Endorsements to Existing Certificates Subchapter A. Regular Education Level and Area Endorsements

§609. Requirements to Add Middle School (Grades 4-8) Specialty Area Endorsement for English, Mathematics, Science, or Social Studies

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), special education certificate must achieve the following:

1. passing score for Praxis middle school specialty area exam in the specific content area; or accumulate 30 credit hours in the specialty content area; and

2. passing score for Praxis Principles of Learning and Teaching 5-9 exam; and

3. six semester hours of reading or passing score for Praxis Teaching Reading exam (#0204).

B. Individuals holding a valid secondary certificate (e.g., 6-12, 7-12, 9-12), 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 middle school specialty area exam in the specific content area; or accumulate 30 credit hours in the specialty content area; and

2. passing score for Praxis Principles of Learning and Teaching 5-9 exam; and

3. six semester hours of reading.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1815 (October 2006), amended LR 37:881 (March 2011).

Catherine R. Pozniak
Executive Director

1103#031

RULE

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Out-of-State (OS) Certificate
(LAC 28:CXXXI.309)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 746—Louisiana Standards for State Certification of School Personnel*: §309. Out-of-State (OS) Certificate. The policy revision reduces the number of years of out-of-state teaching experience from four to three years to qualify for PRAXIS exclusion. This revision will align certification policy with amendments made to R.S. 17:6 in Act 669 of the 2010 Louisiana Legislative Session.

Title 28 EDUCATION

Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel Chapter 3 Teaching Authorizations and Certifications Subchapter A. Standard Teaching Authorizations §309. Out-of-State (OS) Certificate

A. - B.5....

C. Advancing from OS to Professional Level 1, 2, or 3 Certificate

1. Pass all parts of Praxis exam(s) required for Louisiana certification:

a. present appropriate scores on the NTE core battery (common exams) or the corresponding Praxis exams (Pre-Professional Skills Tests in reading, writing, and mathematics); the Principles of Learning and Teaching (PLT) or other pedagogy exam required for the area(s) of certification; and the specialty area exam in the certification area in which the teacher preparation program was completed or in which the initial certificate was issued;

b. if applicant has obtained National Board Certification (NBC) in corresponding areas for which certification is being sought as well as certification/licensure in the state of origin, the examination required for NBC will be accepted to fulfill the testing requirements for certification;

c. a candidate who is certified in another state can qualify for exclusion from the Praxis exam(s) required for Louisiana certification under these criteria:

i. he/she meets all requirements for Louisiana certification except the Praxis exam requirements; has at least three years of successful teaching experience in another state, as determined by the board; and teaches on an OS

certificate for one year in a Louisiana approved public or an approved private school system;

ii. the teacher's Louisiana employing authority verifies that he/she has completed one year of successful teaching experience in a Louisiana approved public or an approved private school and that he/she has been recommended for further employment; and

iii. the employing authority requests that he/she be granted a valid Louisiana teaching certificate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1799 (October 2006), amended LR 33:433 (March 2007), LR 34:1611 (August 2008), LR 35:222 (February 2009), LR 35:894 (May 2009), LR 37:882 (March 2011).

Catherine R. Pozniak
Executive Director

1103#032

RULE

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Out-of-State Principal Level 2 (OSP2)
(LAC 28:CXXXI.723)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 746—Louisiana Standards for State Certification of School Personnel*: §723. Out-of-State Principal Level 2 (OSP2). The policy revision will allow an applicant to request PRAXIS exclusion for issuance of an Out-of-State Principal (OSP2) Level 2 certificate after serving one year as an assistant principal or principal in a Louisiana public school system on an Out-of-State Principal (OSP1) Level 1 certificate. This revision is required to align policy with amendments made to R.S.17:7.1(3) in Act 326 of the 2010 Louisiana Legislative Session.

Title 28 EDUCATION

Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel Chapter 7. Administrative and Supervisory Credentials Subchapter B. Out-of-State Administrative Certification Structure §723. Out-of-State Principal Level 2 (OSP2)

A. This certificate is valid for five years and is renewable every five years, based upon successful completion and verification of required continuing learning units.

1. Eligibility requirements:

a. a valid OSP1 certificate;

b. completion of Louisiana PRAXIS requirements (School Leaders Licensure Assessment (1010) Prior to 12/31/09 or School Leaders Licensure Assessment (1011) Effective 1/1/10 OR qualify for PRAXIS/NTE exclusion [as set forth in R.S. 17:7.1.(A)(7)] by fulfilling the following:

i. minimum of four years of successful experience as a principal in another state, as verified by the previous out-of-state school district(s);

- ii. completes one year of employment as an assistant principal or principal in a Louisiana public school system while holding the three-year OSP 1 certificate; and
- iii. the local superintendent (or designee) of the employing Louisiana public school system has recommended him/her for continued administrative employment in the following school year;

c. completion of the Educational Leader Induction Program under the administration of the Louisiana Department of Education.

2. **Renewal Requirements.** To maintain a valid OSP2 certificate, the holder is required to complete 150 continuing learning units of professional development consistent with the Individual Professional Growth Plan (IPGP) over a five year time period, beginning with issuance date of the OSP2 certificate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10, and R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1825 (October 2006), amended LR 35:2325 (November 2009), LR 36:882 (March 2011).

Catherine R. Pozniak
Executive Director

1103#033

RULE

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Requirements to Add Early Childhood (Grades PK-3)(LAC 28:CXXXI.605)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 746—Louisiana Standards for State Certification of School Personnel*: §605. Requirements to add Early Childhood (Grades PK-3). This revision in policy specifies that to add Early Childhood PK-3 to an existing teaching certificate, PRAXIS examination #0521 must be completed. This revision is a correction of current Bulletin 746 policy.

Title 28

EDUCATION

Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel

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 (#0521); 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 (#0521) 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).

Catherine R. Pozniak
Executive Director

1103#034

RULE

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—School Nurse (LAC 28:CXXXI.411)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 746—Louisiana Standards for State Certification of School Personnel*: §411. School Nurse. The policy revision will align Bulletin 746 requirements with State Board of Nursing requirements by allowing the renewal of ancillary Type B and Type A School Nurse certificates upon completion of 150 contact hours or 15 (CEUs) of professional development. The Type B certificate will no longer require the additional six semester hours of coursework for renewal and the designation that a Type A School Nurse certificate is valid for life of continuous service will be replaced with valid for five years. This revision in Bulletin 746 aligns BESE policy with state guidelines for the renewal of a Register Nurse license.

Title 28

EDUCATION

Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel

Chapter 4. Ancillary School Service Certificates

§411. School Nurse

A. Type C School Nurse—valid for three years.

- 1. Eligibility requirements:
 - a. current Louisiana licensure as a registered professional nurse; and
 - b. minimum of two years experience as a registered nurse.

2. **Renewal Guidelines.** May be renewed once for a three year period, upon presentation of a copy of current Louisiana licensure as a registered professional nurse and upon request of Louisiana employing authority.

B. Type B School Nurse—valid for five years.

- 1. Eligibility requirements:

a. current Louisiana licensure as a registered professional nurse; and

b. three years of experience as a Type C School Nurse.

2. Renewal guidelines:

a. completion of Continuing Professional Development/Education Units (CEUs) (150 contact hours or 15 CEUs) in a variety of activities designed to maintain and expand a school nurse's skills and to ensure the provision of quality services. These CEUs must be earned at the rate of a minimum of 30 contact hours per year and may be completed through the American Nurses Credentialing Center (ANCC), the State Board of Nursing or district approved professional development; and

b. current Louisiana licensure as a registered professional nurse.

C. Type A School Nurse—valid for five years.

1. Eligibility requirements:

a. current Louisiana licensure as a registered professional nurse;

b. baccalaureate degree in nursing or a health-related field from a regionally accredited college or university; and

c. five years experience as a certified Type B school nurse.

2. Renewal guidelines:

a. completion of Continuing Professional Development/Education Units (CEUs) (150 contact hours or 15 CEUs) in a variety of activities designed to maintain and expand a school nurse's skills, and to ensure the provision of quality services. These CEUs must be earned at the rate of a minimum of 30 contact hours per year and may be completed through the American Nurses Credentialing Center (ANCC), the State Board of Nursing or district approved professional development; and

b. current Louisiana licensure as a registered professional nurse.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1808 (October 2006), amended LR 36:1998 (September 2010), LR 37:883 (March 2011).

Catherine R. Pozniak
Executive Director

1103#035

RULE

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—School Therapists
(LAC 28:CXXXI.421)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 746—Louisiana Standards for State Certification of School Personnel*: §421. Overview. This revision in policy will allow for the two new

certification areas of Certified Licensed Occupational Therapist Assistant (COTA) and Physical Therapist Assistant (PTA) to establish compliance with R.S. 37:3001-3014 as administered by the Board of Medical Examiners and R.S. 37:2401-2424 as administered by the Louisiana State Board of Physical Therapy Examiners.

Title 28

EDUCATION

Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel

Chapter 4. Ancillary School Service Certificates

Subchapter B. School Therapists

§421. Overview

A. - C.2. ...

D. Occupational Therapy

1. Certified Licensed Occupational Therapist Assistant (COTA)—valid for five years; renewable.

a. Eligibility Requirements. A valid COTA license to practice occupational therapy in Louisiana in compliance with R.S. 37:3001-3014, as administered by the Board of Medical Examiners;

b. a COTA must work under the supervision of a Licensed Occupational Therapist;

c. Renewal Guidelines. Applicant must present copy of his/her current licensure, and request by the Louisiana employing authority.

2. Occupational Therapist Provisional Certification—valid for two years.

a. Eligibility Requirements. A temporary license to practice occupational therapy in Louisiana in compliance with R.S. 37:3001-3014, as administered by the Louisiana State Board of Medical Examiners.

b. Renewal Guidelines—nonrenewable.

3. Occupational Therapist Full Certificate—valid for five years; renewable.

a. Eligibility Requirements. A valid license to practice occupational therapy in Louisiana in compliance with R.S. 37:3001-3014, as administered by the Board of Medical Examiners.

b. Renewal Guidelines. Applicant must present copy of current licensure, and request by the Louisiana employing authority.

E. Physical Therapy

1. Physical Therapist Assistant (PTA)—valid for five years.

a. Eligibility Requirements. A valid PTA license to assist in the practice of physical therapy in compliance with R.S. 37:2401-2424, as administered by the Louisiana State Board of Physical Therapy Examiners.

b. A PTA must work under the supervision of a licensed physical therapist.

c. Renewal Guidelines. Applicant must present a copy of his/her current licensure, and request of the Louisiana employing authority.

2. Physical Therapist Provisional Certification—valid for two years.

a. Eligibility Requirements. A temporary license to practice physical therapy in compliance with R.S. 37:2401-2424, as administered by the Louisiana State Board of Physical Therapy Examiners.

b. Renewal Guidelines—nonrenewable.

3. Physical Therapist Full Certificate—valid for five years.

a. Eligibility Requirements: a valid Louisiana license to practice physical therapy in compliance with R.S. 37:2401-2424, as administered by the Louisiana State Board of Physical Therapy Examiners.

b. Renewal Guidelines: Applicant must present a copy of his/her current licensure, and request of the Louisiana employing authority.

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 32:1811 (October 2006), amended LR 34:433 (March 2008), LR 37:884 (March 2011).

Catherine R. Pozniak
Executive Director

1103#036

RULE

Board of Elementary and Secondary Education

Bulletin 1530—Louisiana’s IEP Handbook for Students with Exceptionalities (LAC 28:XCVII.105, 113, 117, and 505)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 1530—Louisiana’s IEP Handbook for Students with Exceptionalities*: §105. Timelines, §113. IEP Timelines, §117. Placement/Least Restrictive Educational Environments, §505. Alternate Assessment Participation Criteria. Revisions to §105 and §113 eliminate ambiguity and provide clarity pertaining to timelines and IEP amendments. Revisions to §117 reflect the new federal reporting guidelines for the preschool Placement/Least Restrictive Educational Environments. The revisions in §505 reflect the requirement to include End of Course (EOC) in the LAA 2 participation criteria.

Title 28

EDUCATION

Part XCVII. Bulletin 1530—Louisiana’s IEP Handbook for Students with Exceptionalities

Chapter 1. Individualized Education Program (IEP)

§105. Timelines

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

c. Students who have been receiving special education in one LEA in Louisiana who transfer to another LEA within Louisiana shall be enrolled in the appropriate special education program in the receiving LEA with the current IEP or the development of a review IEP within five school days of the transfer.

B. - B.2.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:2332 (November 2009), amended LR 37:885 (March 2011).

§113. IEP Amendments

A. In making changes to a student’s IEP after the annual IEP Team meeting for a school year, the parent of a student with a exceptionality and the public agency may agree not to

a convene an IEP Team meeting for the purposes of making those changes, and instead may amend or modify the student’s current IEP.

1. - 4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:2335 (November 2009), amended LR 37:885 (March 2011).

§117. Placement/Least Restrictive Educational Environments

A. - A.7.a. ...

B. For Students with Exceptionalities Ages 3-5. In determining the appropriate setting for a preschool-aged student, each setting noted shall be considered; but the list should not be considered a continuum of least restrictive environment. The settings for preschool-aged students, three through five years, are defined as follows.

1. For Students with Disabilities Ages 3-5

a. Attending a regular early childhood program at least 10 hours per week:

i. receives the majority of special education and related services in the regular early childhood program;

(a). regular early childhood programs include, but are not limited to Head Start, kindergarten, private kindergarten or preschools, preschool classes offered to an eligible pre-kindergarten population by the LEA (e.g., LA 4, Title I); and group child development center or child care;

ii. receives the majority of special education and related services in some other location.

b. Attending a regular early childhood program less than 10 hours per week:

i. receives the majority of special education and related services in the regular early childhood program;

ii. receives the majority of special education and related services in some other location.

c. In early childhood special education—separate class:

i. attends a special education program in a class that includes less than 50 percent nondisabled children. Special education programs include, but are not limited to special education and related services provided in special education classrooms in regular school buildings; trailers or portables outside regular school buildings; child care facilities; hospital facilities on an outpatient basis; and other community-based settings.

d. In early childhood special education—separate school:

i. receives special education in a public or private day school designed specially for children with disabilities.

e. In early childhood special education—residential facility:

i. receives special education in a public or privately operated residential school or residential medical facility on an inpatient basis.

f. Receiving special education and related services at home:

i. when the child does not attend a regular early childhood program or special education program, but the child receives some or all of his/her special education and related services in the home. Children who receive special education both in a service provider location and at home should be reported in the home category.

g. Receiving special education and related services at service provider location:

i. when the child receives all of their special education and related services from a service provider and does not attend an early childhood program or a special education program provided in a separate class, separate school, or residential facilities. For example, speech therapy is provided in private clinicians' offices; clinicians' offices located in school buildings; hospital facilities on an outpatient basis, and libraries and other public locations.

2. For Students who are Gifted and/or Talented Ages 3-5

a. Attending a regular early childhood program at least 10 hours per week:

i. receives the majority of special education and related services in the regular early childhood program;

(a). regular early childhood programs include, but are not limited to Head Start, kindergarten, private kindergarten or preschools, preschool classes offered to an eligible pre-kindergarten population by the LEA (e.g., LA 4, Title I), and group child development center or child care;

ii. receives the majority of special education and related services in some other location.

b. Attending a regular early childhood program less than 10 hours per week:

i. receives the majority of special education and related services in the regular early childhood program;

ii. receives the majority of special education and related services in some other location.

c. In early childhood special education—separate class:

i. attends a special education program in a class that includes less than 50 percent nondisabled children. Special education programs include, but are not limited to special education classrooms in regular school buildings; trailers or portables outside regular school buildings, and child care facilities.

d. In early childhood special education—residential facility:

i. attends a public or privately operated residential school or residential medical facility on an inpatient basis.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:2335 (November 2009), amended LR 37:885 (March 2011).

Chapter 5. Participation in Statewide Assessments

§505. Alternate Assessment Participation Criteria

A. - A.3.j. ...

B. LEAP Alternate Assessment, Level 2 (LAA 2)

1. The student scored at the Unsatisfactory level in English language arts and/or mathematics on the previous year's LEAP/iLEAP/GEE or scored Needs Improvement on the English II or English III and/or Algebra 1 or Geometry EOC or participated in the LAA 1 or LAA 2.

B 2. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:2343 (November 2009), amended LR 37:886 (March 2011).

Catherine R. Pozniak
Executive Director

1103#037

RULE

Board of Elementary and Secondary Education

State Superintendent (LAC 28:I.309)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended Louisiana Administrative Code, Title 28, Part I, §309. State Superintendent. Louisiana Administrative Code, Title 28, Part I, Section 309.B contains the qualifications for the state superintendent of education. Act 323 of the 2010 Regular Session of the Louisiana State Legislature revised the qualifications required for the position of state superintendent of education. As a result of Act 323, the Louisiana Administrative Code is being changed to reflect the statutory changes.

Title 28

EDUCATION

Part I. Board of Elementary and Secondary Education

Chapter 3. Composition and General Authority

§309. State Superintendent

A. - A.4. ...

B. Qualifications. The state superintendent shall possess the following qualifications.

1. General:

a. advanced degree in public administration, education, or related area;

b. background in the formulation and implementation of public policy;

c. strong academic background; and

d. qualifications as are adopted by rule by the board for the position of superintendent of a city, parish, or other local public school board, except that any such qualification may be waived by a favorable vote of at least two-thirds of the authorized board membership.

2. Experience:

a. proven record of success in administration;

b. demonstrated ability to achieve positive results;

c. credibility in his/her current profession; and

d. proven record of team building.

3. Professional skills:

a. proven decision-making skills;

b. proven leadership skills;

c. ability to work effectively with the legislature and executive branches of the government, education, business, and civic organizations; and

d. outstanding interpersonal and communication skills.

C. - E.9. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:21(C), R.S. 17:23(B), R.S. 17:6(B), R.S. 17:21(B), R.S. 17:21(D), R.S. 17:21(A), R.S. 17:1990, R.S. 17:1951, R.S.

17:24(A), R.S. 17:24(B), R.S. 17:24(C), R.S. 17:24(D), R.S. 17:22(2)(f), R.S. 36:645, R.S. 17:22(6), R.S. 17:88(B), R.S. 17:88(D), R.S. 17:92, R.S. 17:10.6(A)(2) and R.S. 17:3983.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:410 (March 2008), amended LR 37:886 (March 2011).

Catherine R. Pozniak
Executive Director

1103#038

RULE

Department of Health and Hospitals Board of Examiners of Nursing Facility Administrators

Nursing Facility Administrators
(LAC 46:XLIX.Chapters 1-16)

Editor's Note: Sections 713 and 1103 are being repromulgated to correct citation errors. This Rule may be viewed in its entirety on pages 590-596 of the February 20, 2011 edition of the *Louisiana Register*.

The Louisiana Board of Examiners of Nursing Facility Administrators does hereby amend LAC 46:XLIX.Chapters 1-16 relative to the administration of nursing facility administrators and their licensure to make certain technical changes, to provide for creation of a "conditional license", to implement statutes, to modify time limits on training, testing and licensure, to establish record retention guidelines, to make changes to Continuing Education Unit requirements from biennially to annual, to insert a chapter delineating a fee schedule range as authorized by statute, and provides for statutorily authorized criminal background checks.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLIX. Nursing Facility Administrators

§713. Waivers

A. All waiver requests shall be submitted with applicant's notarized application.

B. Provisions for the six-month AIT, or portions thereof, may be waived on the basis of:

1. education. Full waiver may be granted if applicant has a Bachelor of Science/Bachelor of Art or Master of Science/Master of Art degree in health care administration that included an internship or the internship was waived by the college or university on the basis of experience and successfully passes an oral exam;

2. experience. Waiver may be granted for any portion of the AIT for experience in the healthcare field that meets or exceeds AIT requirements in their specialty and such areas as approved by the board. Request for waivers are to be submitted with the application and properly documented on forms supplied by the board;

a. examination. All applicants for a full waiver undergo an oral examination conducted by a board member or an authorized representative. Applicants for partial waiver may be required to undergo an oral examination in those areas for which waiver is requested;

b. non-participating facility experience. No full waiver will be granted for experience gained in a facility that is not certified for and does not participate in Medicare

and/or Medicaid. All applicants applying for waiver based on experience in a non-participating facility must undergo an oral examination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2504.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Examiners of Nursing Home Administrators, April 1970, amended and promulgated LR 6:276 (June 1980), amended LR 9:62 (February 1983), LR 10:499 (July 1984), LR 12:512 (August 1986), repealed and repromulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators, LR 18:181 (February 1992), amended by the Board of Nursing Examiners of Facility Administrators, LR 37:593 (February 2011), repromulgated LR 37:887 (March 2011).

§1103. Registration of Licenses and Certificates

A.1. Every person who holds a valid license as a nursing home administrator issued by the board shall immediately upon issuance thereof be deemed registered with the board and issued a certificate of registration.

a. Thereafter, such individual shall annually apply to the board for a new certificate of registration and report any facts required by the board on forms provided for such purpose.

2. ...

3. Charges for replacement and/or second copies of permanent licenses, re-registration certificates, or licensee cards shall be assessed as provided for in Chapter 12 of this Part.

B.1. Upon making an application for a new certificate of registration such licensee shall pay an annual registration fee as provided for in Chapter 12 of this Part and, at the same time, shall submit evidence satisfactory to the board that, during the annual period immediately preceding such application for registration, they have attended a continuing education program or course of study as provided in Chapter 9 of these rules and regulations. Unless prior approval is obtained, originals of the certificate(s) of attendance for 15 hours of approved continuing education shall be attached to the annual re-registration application.

2. A licensed nursing home administrator no longer practicing in Louisiana may place his license in an inactive or conditional status. He shall continue to register his license annually but is exempt from continuing education requirements. Should a licensee wish to reactivate their license they shall undergo 60 days of on-site re-orientation under supervision of a board-approved preceptor, unless such person has been actively practicing in another state and meets Louisiana continuing education requirements. In either case, to change a conditional license or inactive license to active status, an applicant must meet all requirements for an active license. Conditional licensure as used in this subparagraph shall mean an individual who meets at least one of the following:

a. administrator not actively running a facility and age 65 or older;

b. administrator not actively running a facility in Louisiana and possessing an active license in another state.

3. The annual conditional licensure fee shall be assessed as provided for in Chapter 12 of this Part.

C. ...

D. The license of a nursing home administrator who fails to comply with the provisions of this Section shall be

suspended by the board and the license shall automatically lapse.

E. Only an individual who has qualified as a licensed and registered nursing home administrator and who holds a valid current registration certificate pursuant to the provisions of these rules for the current annual registration period, shall have the right and the privilege of using the title "nursing home administrator" and have the right and the privilege of using the abbreviation "NFA." after his name. No other person shall use or shall be designated by such title or such abbreviation or any other words, letters, sign, card, or device tending to, or intended to indicate that such person is a licensed and registered nursing home administrator.

F. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2504.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Examiners of Nursing Home Administrators, April 1970, amended and promulgated LR 9:461 (July 1983), repealed and repromulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators LR 18:181 (February 1992), amended LR 25:1627 (September 1999), LR 25:2407 (December 1999), repromulgated LR 26:82 (January 2000), LR 26:316 (February 2000), amended by the Board of Examiners of Nursing Facility Administrators, LR 37:594 (February 2011), repromulgated LR 37:887 (March 2011).

Mark A. Hebert
Executive Director

1103#004

RULE

Department of Health and Hospitals Board of Medical Examiners

Medical Psychologists, General,
Licensure, Certification and Practice
(LAC 46:XLV.231-235; 3901-3961; and 6101-6121)

The Louisiana State Board of Medical Examiners, in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the authority the Louisiana Medical Practice Act, R.S. 37:1261-1292 and the Louisiana Medical Psychology Practice Act, as enacted by the Louisiana Legislature in Acts 2009, No. 251, R.S. 37:1360.51-1360.72, has adopted general and administrative rules governing the licensure, certification and practice of medical psychologists in this state, LAC Title 46:XLV, Subpart 1, Chapter 1, Subchapter M, Sections 231-235, Subpart 2, Chapter 39, Subchapters A-H, Sections 3901-3961 and Subpart 3, Chapter 61, Subchapters A-D, Sections 6101-6121. The Rules are set forth below.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLV. Medical Professions

Subpart 1. General

Chapter 1. Fees and Costs

Subchapter M. Medical Psychologists Fees

§231. Scope of Subchapter

A. The rules of this Subchapter prescribe the fees and costs applicable to licensing and certification of medical psychologists.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:1281; 37:1360.66.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:888 (March 2011).

§233. Licenses, Certificates, Permits

A. For processing an application for licensure as a medical psychologist, a fee of \$250 shall be payable to the board.

B. For processing an application for certification of the advanced practice of medical psychology, a fee of \$150 shall be payable to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1281, 37:1360.66.

HISTORICAL NOTE: Promulgated by the Department of Health Hospitals, Board of Medical Examiners, LR 37:888 (March 2011).

§235. Annual Renewal

A. For processing a medical psychologist's annual renewal of license, a fee of \$200 shall be payable to the board.

B. For processing a medical psychologist's annual renewal of a certificate of advanced practice, a fee of \$100 shall be payable to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1281, 37:1360.66.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:888 (March 2011).

Subpart 2. Licensure and Certification

Chapter 39. Medical Psychologists

Subchapter A. General Provisions

§3901. Scope of Chapter and Definitions

A. The rules of this Chapter govern the licensing and certification of medical psychologists in the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:888 (March 2011).

§3903. Definitions

A. As used in this Chapter, the following terms and phrases shall have the meanings specified.

Applicant—an individual who has applied to the board for a license as a medical psychologist or a certificate of advanced practice.

Approved—as applied to an examination, school, college, university, institution, organization, program, curriculum, course of study or continuing professional education, shall mean affirmatively recognized and sanctioned by the board in accordance with this Chapter.

Board—the Louisiana State Board of Medical Examiners, as constituted in R.S. 37:1263.

Bona Fide Medication Sample—a medication, other than a controlled substance, packaged by the original manufacturer thereof in such quantity as does not exceed a reasonable therapeutic dosage and provided at no cost to a medical psychologist for administration or distribution to a patient at no cost to the patient.

Certificate of Advanced Practice or *Certificate* or *Certification*—the board's official recognition of a medical psychologist's lawful authority to engage in advanced

practice of medical psychology as provided by R.S. 37:1360.57 and Subpart 3 of these rules.

Collaborating Physician—a physician who consults and/or collaborates with a medical psychologist.

Concurrence or Concur—a physician's agreement to a plan for psychopharmacological management of a patient based on prior discussion with a medical psychologist.

Consultation and Collaboration with a MP or Consult and/or Collaborate—that practice in which a physician discusses and, if deemed appropriate, concurs in a medical psychologist's plan for psychopharmacologic management of a patient for whom the physician is the primary or attending physician.

Controlled Substance—any substance defined, enumerated, or included in federal or state statute or regulations 21 C.F.R. 1308.11-15 or R.S. 40:964, or any substance which may hereafter be designated as a controlled substance by amendment or supplementation of such regulations or statute.

Discussion—a communication between a physician and a medical psychologist conducted in person, by telephone, in writing or by some other appropriate means.

Drug—shall mean the same as the term "drug" as defined in R.S. 40:961(16), including controlled substances except narcotics, but shall be limited to only those agents related to the diagnosis and treatment or management of mental, nervous, emotional, behavioral, substance abuse or cognitive disorders.

Good Moral Character—as applied to an applicant, means that:

a. the applicant has not, prior to or during the pendency of an application to the board, been guilty of any act, omission, condition, or circumstance which would provide legal cause under R.S. 37:1360.67 for the suspension or revocation of a license or certificate;

b. the applicant has not, prior to or in connection with the application, made any representation to the board, knowingly or unknowingly, which is in fact false or misleading as to a material fact or omits to state any fact or matter that is material to the application; or

c. the applicant has not made any representation or failed to make a representation or engaged in any act or omission which is false, deceptive, fraudulent, or misleading in achieving or obtaining any of the qualifications for a license or certificate required by this Chapter.

LAMP—the Louisiana Academy of Medical Psychologists.

LSBEP—the Louisiana State Board of Examiners of Psychologists, as constituted in R.S. 37:2353.

Medication—is synonymous with *drug*, as defined herein.

Medical Psychologist or *MP*—a psychological practitioner who has undergone specialized training in clinical psychopharmacology and has passed a national proficiency examination in psychopharmacology approved by the board. Such practice includes the authority to administer and prescribe drugs and distribute *bona fide* medication samples, as defined in this Section.

Medical Psychology—that profession of the health sciences which deals with the examination, diagnosis, psychological, pharmacologic and other somatic treatment and/or management of mental, nervous, emotional,

behavioral, substance abuse or cognitive disorders, and specifically includes the authority to administer, and prescribe drugs and distribute bonafide medication samples as defined in this Drvvyion. In addition, the practice of medical psychology includes those practices of psychology as defined in R.S. 37:2352(5).

Medical Psychology Advisory Committee or *Committee*—a committee to the board constituted under R.S. 37:1360.63.

Medical Psychology Practice Act or MP Act—Acts 2009, No. 251, R.S. 37:1360.51-1360.72.

Mental, Nervous, Emotional, Behavioral, Substance Abuse and Cognitive Disorders—those disorders, illnesses or diseases listed in either the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association or the mental, nervous, emotional, behavioral, substance abuse and cognitive disorders listed in the International Classification of Diseases published by the World Health Organization.

Narcotics—natural and synthetic opioid analgesics and their derivatives used to relieve pain.

Physician—an individual licensed by the board to engage in the practice of medicine in the state of Louisiana as evidenced by a current license duly issued by the board.

Primary or Attending Physician—a physician who has an active clinical relationship with a patient and is principally responsible for the health care needs of the patient, or currently attending to the health care needs of the patient, or considered by the patient to be his or her primary or attending physician.

Psychopharmacologic Management—the treatment and/or management of the mental, nervous, emotional, behavioral, substance abuse and cognitive disorders with medication.

State—any state of the United States, the District of Columbia, and Puerto Rico.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:888 (March 2011).

Subchapter B. Requirements and Qualifications for License

§3905. Scope of Subchapter

A. The rules of this Subchapter prescribe the requirements, qualifications and conditions for licensure as a medical psychologist in this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:889 (March 2011).

§3907. Qualifications for License

A. To be eligible for a license to practice as a medical psychologist an applicant shall:

1. possess a current, unrestricted license in good standing to practice psychology duly issued by the LSBEP;

2. be a citizen of the Unites States or possess valid and current legal authority to reside and work in the United States duly issued by the Commissioner of the Immigration and Naturalization Service of the United States under and pursuant to the Immigration and Nationality Act (66 Stat.

163) and the Commissioner's regulations thereunder (8 CFR);

3. be of good moral character as defined by Section 3903A of these rules;

4. possess approved certification in Basic Life Support (BLS);

5. possess:

a. a post-doctoral master's degree in clinical psychopharmacology conferred by a regionally accredited institution approved by the board; or

b. equivalent training to a post-doctoral master's degree in clinical psychopharmacology approved by the board;

6. have within the past 3 years, in conformity with the restrictions and limitations prescribed by this Chapter, taken and passed a national examination in psychopharmacology approved by the board; and

7. not be otherwise disqualified by any ground for denying a license provided by the MP Act or these rules.

B. The burden of satisfying the board as to the qualifications and eligibility of an applicant for licensure shall be upon the applicant. An applicant shall not be deemed to possess such qualifications unless the applicant demonstrates and evidences such qualifications in the manner prescribed by and to the satisfaction of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:889 (March 2011).

§3909. Alternative Qualifications for License

A. Provided application is made within 12 months of the effective date of these rules, an individual who desires to be licensed as a MP may qualify for licensure pursuant to R.S. 37:1360.55A without compliance with the requirements prescribed by Section 3907, upon submission of evidence satisfactory to the board that the applicant possessed all of the following as of January 1, 2010:

1. an unrestricted license in good standing to practice psychology issued by the LSBEP;

2. an unrestricted certificate of prescriptive authority issued by the LSBEP;

3. a controlled substance permit duly issued by the Louisiana State Board of Pharmacy;

4. a controlled substance registration duly issued by the United States Drug Enforcement Administration; and

5. as of the date of application, not be otherwise disqualified by any ground for denying a license provided by the MP Act or these rules.

B. The alternative qualification provided by this Section shall expire and become null, void and to no effect 12 months and 1 day following the effective date of these rules.

C. The burden of satisfying the board as to the qualifications and eligibility of an applicant for licensure shall be upon the applicant. An applicant shall not be deemed to possess such qualifications unless the applicant demonstrates and evidences such qualifications in the manner prescribed by and to the satisfaction of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:890 (March 2011).

§3911. Qualifications for Certificate of Advanced Practice

A. To be eligible for a certificate of advanced practice an applicant shall, as of the date of application to the board, have:

1. a current, unrestricted license as a MP duly issued by the board and not be the subject of an investigation or pending disciplinary proceeding by the board;

2. practiced as a MP for at least three of the past four years. With respect to individuals licensed under the alternative qualification provided in Section 3909 of this Chapter, such experience shall be deemed to have commenced on the date that the applicant's initial certificate of prescriptive authority was issued by the LSBPE;

3. as a MP, treated at least one hundred patients which demonstrate the competence of the medical psychologist. Of this number at least 25 shall have involved the use of major psychotropics and at least 25 shall have involved the use of major antidepressants;

4. received the written recommendation of two collaborating physicians who hold a current, unrestricted license to practice medicine in this state duly issued by the board, who are familiar with the applicant's competence to practice medical psychology;

5. received a favorable recommendation from the committee; and

6. completed a minimum of one hundred hours of continuing medical education relating to the use of medications in the management of patients with psychiatric illnesses, commencing with:

a. initial issuance of a certificate of prescriptive authority by the LSBPE if prior to January 1, 2010; or

b. the date the MP is licensed by the board after January 1, 2010.

B. The burden of satisfying the board as to the qualifications and eligibility of an applicant for certification shall be upon the applicant. An applicant shall not be deemed to possess such qualifications unless the applicant demonstrates and evidences such qualifications in the manner prescribed by and to the satisfaction of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:890 (March 2011).

Subchapter C. Application

§3913. Scope of Subchapter

A. The rules of this Subchapter govern the procedures and requirements for application to the board for a license to practice medical psychology.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:890 (March 2011).

§3915. Application Procedure

A. Application must be made and submitted in a format approved by the board and shall include:

1. proof, documented in a form satisfactory to the board, that the applicant possesses the qualifications set forth in this Chapter, along with a recent photograph;

2. certification of the truthfulness and authenticity of all information, representations and documents contained in or submitted with the completed application;
3. criminal history record information;
4. payment of the fee provided in Chapter 1 of these rules; and
5. such other information and documentation as the board may require.

B. Upon submission of a completed application a personal interview with a member of the board or a designee may be required as a condition of licensure when:

1. discrepancies exist in an initial application;
2. an applicant has been the subject of prior adverse action in any jurisdiction; or
3. the board has questions respecting an application response.

C. The recommendation of the board member or designee as to the applicant's fitness for licensure shall be made a part of the applicant's file.

D. The board may reject or refuse to consider an application which is not complete in every detail. The board may in its discretion require a more detailed or complete response to any request for information set forth in the application as a condition to application consideration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:890 (March 2011).

§3917. Effect of Application

A. The submission of an application for licensure to the board shall constitute and operate as an authorization by the applicant to each educational institution at which the applicant has matriculated, each state or federal agency to which the applicant has applied for any license, permit, certificate, or registration, each person, firm, corporation, clinic, office, or institution by whom or with whom the applicant has been employed in the practice of psychology or medical psychology, each physician or other health care practitioner whom the applicant has consulted or seen for diagnosis or treatment and each professional organization or specialty board to which the applicant has applied for membership, to disclose and release to the board any and all information and documentation concerning the applicant which the board deems material to consideration of the application. With respect to any such information or documentation, the submission of an application for licensing to the board shall equally constitute and operate as a consent by the applicant to disclosure and release of such information and documentation and as a waiver by the applicant of any privilege or right of confidentiality which the applicant would otherwise possess with respect thereto.

B. By submission of an application for licensure to the board an applicant shall be deemed to have given his consent to submit to physical or mental examinations if, when, and in the manner so directed by the board and to waive all objections as to the admissibility or disclosure of findings, reports, or recommendations pertaining thereto on the grounds of privileges provided by law. The expense of any such examination shall be borne by the applicant.

C. The submission of an application for licensure to the board shall constitute and operate as an authorization and consent by the applicant to the board to disclose and release

any information or documentation set forth in or submitted with the applicant's application or obtained by the board from other persons, firms, corporations, associations, or governmental entities pursuant to this Section to any person, firm, corporation, association, or governmental entity having a lawful, legitimate, and reasonable need therefore including, without limitation, the psychology or medical psychology licensing authority of any state; the Federal Drug Enforcement Administration; the Louisiana Board of Pharmacy; the Department of Health and Hospitals; federal, state, county, parish and municipal health and law enforcement agencies; and the Armed Services.

D. The board, acting through its president or a member designated by the president, may approve the issuance of any directive or order to carry out the provisions of Subsection B of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:891 (March 2011).

Subchapter D. Board Approval of Schools, Colleges, Universities, or Institutions

§3919. Scope of Subchapter

A. The rules of this Subchapter prescribe the requirements for board approval of a school, college, university or institution for the purpose of assessing qualifications for medical psychology licensure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:891.

§3921. Applicability of Approval

A. Successful completion of a post-doctoral master's degree in clinical psychopharmacology from a regional accredited institution approved by the board is among the educational qualifications required for MP licensure.

B. The completion of training approved by the board that is equivalent to a post-doctoral master's degree in clinical psychopharmacology is an alternative educational qualification for MP licensure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:891 (March 2011).

§3923. Approval of Schools and Colleges

A. A school, college, university or institution shall be concurrently considered approved by the board for purposes of qualification under this Chapter provided it:

1. is accredited by one of the six regional bodies recognized by the United States Department of Education's Council on Postsecondary Accreditation;
2. has achieved the highest level of accreditation or approval awarded by statutory authorities of the state in which the school or college is located;
3. offers a full-time post-doctoral master's program in clinical psychopharmacology that:
 - a. includes curriculum instruction in each of the following areas:
 - i. anatomy and physiology;
 - ii. biochemistry;

iii. neurosciences to include neuroanatomy, neuropathology, neurophysiology, neurochemistry and neuroimaging;

iv. pharmacology;

v. psychopharmacology;

vi. clinical medicine/pathophysiology; and

vii. health assessment, including relevant physical and laboratory assessment; and

b. provides opportunity to review, present and discuss each of the following:

i. case examples representing a broad range of clinical psychopathologies;

ii. medical conditions presenting as psychiatric illness;

iii. treatment complexities, including complicating medical conditions, diagnostic questions, choice of medications, and untoward side effects;

iv. compliance problems; and

v. alternative treatments and treatment failures.

B. Board approval of a school, college, university or institution shall be deemed to be effective as to an applicant if such school, college, university or institution was approved as of the date on which the applicant's post-doctoral master's degree in clinical psychopharmacology was awarded.

C. Subject to Section 3925 of these rules, a school, college, university or institution accepted by the LSBPE for MP prescriptive authority on or before January 1, 2010, shall be considered approved by the board for purposes of qualification under this Chapter.

D. For the purposes of this Chapter, equivalent training to the post-doctoral master's degree provided in R.S. 37:1360.55B.(2) is defined as the successful completion of the Department of Defense Psychopharmacology Demonstration Project (DOD-PDP), or a similar program developed and operated under the auspices of any branch of the United States armed services and approved by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:891 (March 2011).

§3925. Withdrawal of Approval

A. Notwithstanding current or prior approval pursuant to this Subchapter or by individual determination, the board's approval of any school, college, university or institution may be withdrawn at any time upon its affirmative finding that such school, college, university or institution does not possess the qualifications for approval specified by this Subchapter or by the MP Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:892 (March 2011).

Subchapter E. Examination

§3927. Scope of Subchapter

A. The rules of this Subchapter designate the examination, passing score, restrictions, limitations and exceptions applicable to medical psychologist licensure in this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:892 (March 2011).

§3929. Designation of Examination

A. The MP licensing examination approved and accepted by the board, pursuant to R.S. 37:1360.55B(3), is the Psychopharmacology Examination for Psychologists (PEP), developed by the American Psychological Association practice organization's College of Professional Psychology and its contractor, the Professional Examination Service, or their successor(s) organizations.

B. The PEP or such other examination as the board may approve shall:

1. be taken after the successful completion of the post-doctoral master's program in clinical psychopharmacology; and

2. not less than three years prior to the date of MP application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:892 (March 2011).

§3931. Passing Score

A. An applicant will be deemed to have successfully passed the examination upon attaining a score equivalent to the passing score required by the PEP and its contractor, the Professional Examination Service, or their successor(s) organizations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:892 (March 2011).

§3933. Restriction, Limitations on Examinations

A. Applicants shall be required to authorize the PEP and the Professional Examination Service to release their testing scores to the board each time the applicant-examinee attempts the examination according to the procedures for such notification established by the PEP.

B. An applicant having failed to attain a passing score upon taking the examination four times shall not thereafter be considered for licensure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:892 (March 2011).

Subchapter F. Licensure Issuance, Termination, Renewal, Reinstatement

§3935. Scope of Subchapter

A. The rules of this Subchapter prescribe the requirements applicable to issuance, termination, renewal and reinstatement of a license to practice medical psychology in this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:892 (March 2011).

§3937. Issuance of Licensure; Certificate of Advanced Practice

A. If the qualifications, requirements, and procedures set forth in this Chapter are met to its satisfaction the board shall

issue a license to the applicant to engage in the practice of medical psychology in this state.

B. If the qualifications, requirements, and procedures set forth in this Chapter are met to its satisfaction the board shall issue a certificate of advanced practice to the applicant to engage in the advanced practice of medical psychology in this state.

C. A license or certificate issued under this Chapter shall designate the applicant's status with respect to advanced practice.

D. Every MP is responsible for updating the board within 15 days should any of the required contact information submitted with an application change after license or certificate issuance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:892 (March 2011).

§3939. Expiration of License, Certificate

A. Every license or certificate issued under this Chapter shall expire and thereby become null, void and to no effect the following year on the last day of June B. The timely submission of a properly completed application for renewal of a license shall operate to continue an expiring license, and if applicable a certificate of advanced practice, in full force and effect pending renewal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:893 (March 2011).

§3941. Renewal of License, Certificate

A. Every license or certificate issued by the board shall be renewed annually on or before the last day of June by submitting to the board a properly completed renewal application, in a format specified by the board, together with the renewal fee prescribed by Chapter 1 of these rules and documentation of:

1. satisfaction of the continuing professional education requirement prescribed by this Chapter; and
2. maintenance of basic life support.

B. Possession of a current, unrestricted license to practice psychology duly issued by the LSBPE is a requirement for initial licensure as a medical psychologist under this Chapter but shall not be required by the board for license renewal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:893 (March 2011).

§3943. Reinstatement of Expired License or Certificate

A. A license or certificate that has expired without renewal may be reinstated by the board provided that application is made within two years of the date of expiration.

B. A MP whose license and/or certificate has expired for a period in excess of two years or who is otherwise ineligible for reinstatement under this Section may apply to the board for an initial original license or certificate pursuant to these rules.

C. An applicant seeking reinstatement more than one but less than two years from the date on which his or her license

or certificate expired shall demonstrate, as a condition of reinstatement, satisfaction of the continuing professional education required by these rules for each year since the date of the license expiration. As additional conditions of reinstatement the board may require that the applicant:

1. complete a statistical affidavit and provide a recent photograph;
2. take and successfully pass:
 - a. all or a designated portion of the national examination required for licensure under this Chapter;
 - b. a written certification or recertification examination acceptable to the board; and/or
 - c. demonstrate clinical competency by successfully completing a program designated by the board, following consultation with the committee, and any recommended remediation.

D. An applicant whose license to practice psychology or medical psychology has been revoked, suspended or placed on probation by the licensing authority of any state or who has voluntarily or involuntarily surrendered his or her license to practice psychology or medical psychology in consideration of the dismissal or discontinuance of pending or threatened administrative or criminal charges following the date on which his or her license to practice as a MP in Louisiana expired, shall be deemed ineligible for license reinstatement.

E. An application for reinstatement of a license or certificate meeting the requirements and conditions of this Chapter may nonetheless be denied for any of the causes for which an application for original licensure or certification may be refused by the board pursuant to R.S. 37:1360.67 or for violation of these rules.

F. An application for reinstatement shall be made in a format supplied by the board together with the applicable fees and costs for license and/or certificate renewal under Chapter 1 of these rules, plus a penalty computed as follows.

1. If the application is made less than one year from the date of expiration, the penalty shall be equal to the renewal fee of the license and, if applicable, the certificate.
2. If the application is made more than one but less than two years from the date of expiration, the penalty shall be equal to twice the renewal fee of the license and, if applicable, the certificate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:893 (March 2011).

Subchapter G. Medical Psychology Advisory Committee

§3945. Scope of Subchapter

A. The rules of this Subchapter identify the constitution, functions and responsibilities of the medical psychology advisory committee to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:893 (March 2011).

§3947. Constitution, Function and Responsibilities of Advisory Committee

A. The board shall constitute and appoint a Medical Psychology Advisory Committee which shall be organized and function in accordance with the MP Act and these rules.

B. Composition. The committee shall be comprised of five members, consisting of:

1. one physician selected from a list of names submitted by the Louisiana State Medical Society, and recommended by Louisiana Psychiatric Medical Association and LAMP, who is certified in the specialty of psychiatry by a member board of the American Board of Medical Specialties or the American Osteopathic Association; and

2. four medical psychologists selected by the board from a list of names recommended by LAMP.

C. Appointment. Each member, to be eligible for and prior to appointment to the committee, shall have maintained residency and a current and unrestricted license or certificate to practice their respective professions in the state of Louisiana for not less than two years.

D. Term of Service. Each member of the committee shall serve for a term of four years, or until a successor is appointed and shall be eligible for reappointment. Committee members serve at the pleasure of the board. Committee members may be reappointed to two additional terms of four years with the length of the terms to be staggered after the first term.

E. Functions of the Committee. The Committee will provide the Board with recommendations relating to the following matters:

1. applications for licensure and for certificates of advanced practice (initial and renewal);

2. educational requirements for licensure and for certificates of advanced practice (initial and renewal);

3. changes in related statutes and rules; and

4. other activities as might be requested by the board.

F. Committee Meetings, Officers. The committee shall meet at least twice each calendar year, or more frequently as may be deemed necessary by a quorum of the committee or by the board. Three members of the committee constitute a quorum. The committee shall elect from among its members a chair, a vice-chair, and a secretary. The chair, or in the absence or unavailability of the chair, the vice-chair, shall call, designate the date, time, and place of, and preside at all meetings of the committee. The secretary shall record or cause to be recorded accurate and complete written minutes of all meetings of the committee and shall cause copies of the same to be provided to the board.

G. Confidentiality. In discharging the functions authorized under this Section, the committee and the individual members thereof shall, when acting within the scope of such authority, be deemed agents of the board. Committee members are prohibited from communicating, disclosing, or in any way releasing to anyone other than the board, any confidential information or documents obtained when acting as the agents of the board without first obtaining the written authorization of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:893 (March 2011).

Subchapter H. Continuing Education

§3949. Scope of Subchapter

A. The rules of this Subchapter provide standards for the continuing professional education required for annual renewal of a license to practice as a medical psychologist,

and prescribe procedures applicable to satisfaction and documentation thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:894 (March 2011).

§3951. Continuing Education Requirement

A. To be eligible for license renewal a MP shall evidence and document in a format specified by the board the successful completion of 35 hours of approved continuing professional education that includes:

1. not less than 20 hours of continuing medical education relevant to the practice of medical psychology; and

2. not less than fifteen hours of continuing education in psychology.

B. A minimum of 25 percent of the continuing medical education required by this Section shall be provided by LAMP.

C. At least two hours required by this Section shall be devoted to ethics relevant to the practice of medical psychology.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:894 (March 2011).

§3953. Qualifying Programs and Activities

A. To be acceptable as qualified continuing professional education under these rules, an activity or program must have significant intellectual or practical content, dealing primarily with matters related to medical psychology or psychology, and its primary objective must be to maintain or increase the participant's competence as a MP.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:894 (March 2011).

§3955. Approval of Program Sponsors

A. Any category 1 education program, course, seminar or activity offered or sponsored by the organizations set forth in this Section shall presumptively be deemed approved by the board for purposes of qualifying as an approved continuing professional education.

B. Approved sponsors of continuing medical education for practitioners licensed under this Part shall include the Louisiana Academy of Medical Psychologists, the Louisiana State Medical Society, the Louisiana Psychiatric Medical Association, the State of Louisiana Department of Health and Hospitals Office of Behavioral Health or its successor, sponsors accredited by the Accreditation Council for Continuing Medical Education approved to offer category 1 educational activities, and other sponsors as may be approved by the board.

C. Approved sponsors for continuing education in psychology shall include the Louisiana Psychological Association, the American Psychological Association, the Louisiana Academy of Medical Psychologists, the state of Louisiana Department of Health and Hospitals, Office of Behavioral Health or its successor, and other sponsors as may be approved by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:894 (March 2011).

§3957. Documentation Procedure

A. A format or method specified by the board for documenting and certifying completion of continuing professional education shall be completed by licensees and returned with an annual renewal application.

B. Any certification of continuing professional education activities not presumptively approved or preapproved in writing by the board pursuant to these rules shall be referred to the committee for its evaluation and recommendations. If the committee determines that an activity certified by an applicant for renewal in satisfaction of continuing education requirements does not qualify for recognition by the board or does not qualify for the number of continuing education units claimed by the applicant, the board shall give notice of such determination to the applicant for renewal. The board's decision with respect to approval and recognition of any such activity shall be final.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:895 (March 2011).

§3959. Failure to Satisfy Continuing Education Requirements

A. An applicant for license renewal who fails to evidence satisfaction of the continuing professional education requirements shall be given written notice of such failure by the board. The license of the applicant shall remain in full force and effect for a period of 60 days following the mailing of such notice, following which it shall be deemed expired, unrenewed, and subject to revocation without further notice, unless the applicant shall have, within such 60 days, furnished the board satisfactory evidence, by affidavit, that:

1. applicant has satisfied the applicable continuing professional education requirements; or
2. applicant's failure to satisfy the continuing professional education requirements was occasioned by disability, illness, or other good cause as may be determined by the board.

B. The license of a MP whose license has expired by nonrenewal or been revoked for failure to satisfy the continuing education requirements of these rules may be reinstated by the board within the time and in accordance with the procedures for reinstatement provided by these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:895 (March 2011).

§3961. Waiver of Requirements

A. The board may, in its discretion, waive all or part of the continuing professional education required by these rules in favor of a MP who makes written request for such waiver and evidences to the satisfaction of the board a permanent physical disability, illness, financial hardship, or other similar extenuating circumstances precluding the MP's

satisfaction of the continuing professional education requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:895 (March 2011).

Subpart 3. Practice

Chapter 61. Medical Psychologists

Subchapter A. General Provisions

§6101. Scope of Chapter

A. The rules of this Chapter govern the practice of medical psychologists in the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:895 (March 2011).

Subchapter B. Necessity for License, Exemptions

§6103. Necessity for License

A. No person shall engage in the practice of medical psychology in the state of Louisiana, or identify or hold himself or herself out as such, nor use in connection with his or her name the words "medical psychologists" or the letters "MP" or any other words, letters, abbreviations, insignia, or signs tending to indicate or imply that the person is a medical psychologist, unless he or she is currently licensed by the board as a medical psychologist.

B. No person shall engage in the advanced practice of medical psychology as defined in the MP Act or these rules in this state in the absence of a current certificate of advanced practice issued by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:895 (March 2011).

§6105. Exemptions

A. The provisions of this Chapter shall not prevent, restrict the practice, services, or activities of any individual:

1. licensed by other laws in this state from engaging in the profession or occupation for which he or she is licensed; or
2. employed as a medical psychologist by the United States government when practicing solely under the direction or control of the United States government agency by which he or she is employed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:895 (March 2011).

Subchapter C. Ethical Guidelines, Authority, Limitations and Standards of Practice

§6107. Scope of Subchapter

A. This Subchapter provides the ethical guidelines, authority, limitations and standards of practice of individuals licensed to practice medical psychology in the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:895 (March 2011).

§6109. Ethical Guidelines

A. A medical psychologist shall, in the practice of medical psychology, observe and abide by the code of ethics of the American Medical Association and American Psychological Association.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:896 (March 2011).

§6111. Authority of Practice

A. An individual currently licensed by the board as a medical psychologist is authorized to:

1. order, administer, and prescribe or distribute without charge drugs recognized as customarily used for the management of mental, nervous, emotional, behavioral, substance abuse and cognitive diseases or disorders; and

2. order and interpret routine laboratory studies and other medical diagnostic procedures, as necessary for adequate pretreatment health screening, diagnosis of mental, nervous, emotional, behavioral, substance abuse and cognitive disorders and treatment maintenance, including those necessary for the monitoring of potential side effects associated with medications prescribed by the MP.

B. An individual currently certified for advanced practice by the board is authorized to engage in the advanced practice of medical psychology as defined by the MP Act and these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:896 (March 2011).

§6113. Limitations of Practice

A. A medical psychologist shall not:

1. order, administer, prescribe or distribute drugs that are not customarily used for the management of mental, nervous, emotional, behavioral, substance abuse and cognitive diseases or disorders;

2. order, administer, prescribe or distribute narcotics, as defined in this Part;

3. utilize controlled substances for the treatment of non-cancer related chronic or intractable pain, as set forth in §§6915-6923 of the board's rules or for the treatment of obesity, as set forth in §§6901-6913 of the board's rules;

4. prescribe medications outside his or her areas of competency consistent with his or her training and experience as defined by the board;

5. delegate the administration, prescription, or distribution of a drug to any other individual;

6. engage in practice beyond the authority conferred by license or certificate approved by the board; or

7. employ a physician or enter into an independent contractor or similar contractual or financial relationship with a physician with whom he or she consults or collaborates. The board may grant an exception to this requirement on a case-by-case basis where it has been shown to its satisfaction that such relationship is structured so as to prohibit interference with the physician's relationship with patients, his or her exercise of independent medical judgment and satisfaction of the obligations and responsibilities imposed by law and the board's rules on a physician.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:896 (March 2011).

§6115. Standards for Prescribing by Medical Psychologists without a Certificate of Advanced Practice

A. Medical psychologists shall prescribe only in consultation and collaboration with the patient's primary or attending physician, and with the concurrence of that physician.

B. The medical psychologist shall also re-consult with the patient's physician prior to making changes in the patient's medication treatment protocol, as established with the physician, or as otherwise directed by the physician.

C. In the event that the primary or attending physician does not concur with the psychopharmacologic treatment protocol planned by a MP, the MP shall defer to the medical judgment of the physician.

D. In the event a patient does not have a primary or attending physician, the medical psychologist shall not prescribe for that patient.

E. Documentation of Physician Consultation. When psychopharmacologic management of a patient is indicated, the initial plan shall include consultation with the patient's primary or attending physician. The medical psychologist shall document the consultation with the primary or attending physician in the patient's medical record. Documentation shall include, but is not necessarily limited to:

1. patient authorization. In order to permit the necessary coordination of care for the patient, the MP shall obtain a release of information from the patient and/or the patient's legal guardian to contact the patient's primary or attending physician in all cases in which psychopharmacologic management is planned. If the patient or the patient's legal guardian declines to sign a release of information authorizing coordination of care with his or her primary or attending physician, the MP shall inform the patient and/or the patient's legal guardian that he or she cannot treat the patient pharmacologically without such consultation;

2. patient identity. The physician's name; date of consultation; and contact information for the patient, physician and MP;

3. purpose. The purpose of consultation (e.g., new medication, change in medication, discontinuance of medication, adverse treatment effects, treatment failure, change in medical status, etc.);

4. psychological evaluation and diagnosis. If known, the psychological evaluation of the patient, including any relevant psychological history, laboratory or diagnostic studies and psychological diagnosis; and any other information the MP or physician deems necessary for the coordination of the care for patient;

5. medication. The specific drug(s) the MP plans to utilize, including the starting dosage and titration plan if any; frequency of use, the number of refills and anticipated duration of therapy; relevant indications and contraindications, any previously utilized psychopharmacologic therapy, and any alternatives;

6. treatment plan. The MP's treatment and/or management plan for the patient;

7. results of consultation. The results of the consultation (e.g., concurrence, deferring or denying medication recommended by the MP); medications ordered (e.g., generic or trade; starting dosage and titration plan, if any; number of refills; etc.) and any other information that might be necessary for the appropriate coordination of care for the patient (e.g., review of prior labs or diagnostic procedures; new labs or diagnostic procedures requested by the physician, if any; etc.);

8. responsibilities. Any specific responsibilities of the MP and physician respecting the patient's care;

9. reporting. Any reporting and documentation requirements between the MP and the physician and/or a schedule by which such are to take place; and

10. immediate consultation. A plan to accommodate immediate consultation between the MP, physician, and/or patient.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:896 (March 2011).

§6117. Standards for Prescribing by Medical Psychologists Holding a Certificate of Advanced Practice

A. Patients receiving care from a medical psychologist who holds a certificate of advanced practice issued under this Part shall have an established primary, attending or referring physician licensed by the board who shall be responsible for the patient's overall medical care.

B. The primary, attending or referring physician shall evaluate the patient for medical conditions in accordance with customary practice standards, and as might be indicated based on the medications that the patient is receiving and/or risk factors that may be present. If the patient has been referred to a medical psychologist holding a certificate of advanced practice for the express purpose of evaluation and treatment to include drug management by the primary, attending or referring physician, this condition shall be considered met.

C. The medical psychologist shall provide the primary, attending or referring physician with a summary of the treatment planned at the initiation of treatment.

D. The medical psychologist shall provide the primary, attending or referring physician with follow-up reports as may be dictated by the patient's condition.

E. The medical psychologist shall provide the patient's primary, attending or referring physician with a summary of the patient's condition and treatment no less than annually.

F. The medical psychologist may treat common side effects of medications used in the treatment of mental illness as defined in this Chapter after consultation with the patient's primary or attending physician and with the concurrence of that physician.

G. The requirements for Subsections C, D and E of this Section shall be considered satisfied if the medical psychologist provides the physician with a copy of the initial examination and follow-up visit records or, in those

instances in which the medical psychologist is providing services authorized under this Section in a hospital or clinic setting on referral of the attending or referring physician on the medical staff of that hospital or clinic, the medical psychologist documents those services in the patient's medical record at that hospital or clinic.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:897 (March 2011).

§6119. Informed Consent

A. In addition to the written release and authorization set forth in Section 6115E, a MP shall insure that each of his or her patients subject to consultation and collaboration with a physician is informed:

1. of the relationship between the MP and physician and the respective role of each with respect to the patient's psychopharmacologic management;

2. that he or she may decline to participate in such a practice and may withdraw at any time without terminating the MP-patient relationship;

3. of the MP's decision to withdraw from consultation and collaboration with a physician; and

4. by written disclosure, of any contractual or financial arrangement that may impact the MP's decision to engage in consultation and collaboration with a physician.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:897 (March 2011).

Subchapter D. Grounds for Administrative Action

§6121. Causes for Administrative Action

A. The board may refuse to issue, or may suspend or revoke any license or certificate, or impose probationary or other restrictions on any license or certificate issued under this Part, for violation of the board's rules relative to medical psychologists or for any of the causes set forth in MP Act, R.S. 37:1360.67A.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:897 (March 2011).

Robert L. Marier, M.D.
Executive Director

1103#064

RULE

Department of Health and Hospitals Board of Medical Examiners

Physician Consultation or Collaboration with Medical Psychologists (LAC 46:XLV.7203, 7207, and 7215)

The Louisiana State Board of Medical Examiners, in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the authority the

Louisiana Medical Practice Act, R.S. 37:1261-1292, and the Louisiana Medical Psychology Practice Act, as enacted by the Louisiana Legislature in Acts 2009, No. 251, R.S. 37:1360.51-1360.72, has amended its administrative rules governing the practice of physicians who engage in consultation or collaboration with medical psychologists in this state, LAC Title 46:XLV, Subpart 3, Chapter 72, Subchapters A, Sections 7203, 7207 and 7215. The rule amendments are set forth below.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part XLV. Medical Professions

Subpart 3. Practice

**Chapter 72. Consultation or Collaboration with
Medical Psychologists**

Subchapter A. General Provisions

§7203. Definitions

A. As used in this Chapter, the following words and terms shall have the meanings specified.

Medical Psychology Practice Act, or MP Act—Acts 2009, No. 251, R.S. 37:1360.51-1360.72.

Medical Psychologist or MP—a psychological practitioner who has undergone specialized training in clinical psychopharmacology, passed a national proficiency examination in psychopharmacology approved by the board and holds a current license to practice medical psychology in this state, duly issued by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1529 (August 2009); amended LR 37:898 (March 2011).

§7207. General Prohibitions

A. A physician shall not consult and collaborate, as defined in §7203 of these rules:

A.1. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6) and 37:2371-2378.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1529 (August 2009), amended, LR 37:898 (March 2011).

§7215. Reporting Obligations

A. A physician who consults and collaborates with a MP should report to the board all instances in which he or she has a good faith reason to believe that the MP has:

1. - 4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1531 (August 2009), amended, LR 37:898 (March 2011).

Robert L. Marier, M.D.
Executive Director

1103#065

RULE

**Department of Health and Hospitals
Board of Nursing**

**Administration of Anesthetic Agents
(LAC 46:XLVII.3705)**

The Louisiana State Board of Nursing amends LAC 46:XLVII.3705. Perineural Catheters in accordance with R.S. 37:918, R.S. 37:919 and R.S. 37:920 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The amendment to LAC 46:XLVII.3705 provides that registered nurses, who are not certified registered nurse anesthetists may titrate and continue infusion of local anesthetic agents through the use of perineural catheters in accordance with revisions to the law governing the practice of nursing through Act 246 of the 2010 Legislature.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

**Part XLVII. Nurses: Practical Nurses and Registered
Nurses**

Subpart 2. Registered Nurses

Chapter 37. Nursing Practice

§3705. Administration of Anesthetic Agents

A. Registered nurses, who are not certified registered nurse anesthetists, may administer anesthetic agents to intubated patients in critical care settings, and may titrate and continue infusion of local anesthetic agents through the use of epidural catheters for pain management, excluding obstetric patients, provided that the following conditions are met.

1. There is an institutional policy and plan for registered nurses (non-CRNAs) to administer anesthetic agents to intubated patients in critical care settings, and to titrate and continue infusion of local anesthetic agents through the use of epidural catheters and perineural catheters for pain management for patients other than obstetric patients that includes:

- a. a clear statement of the purpose and goal of the treatment;
- b. written protocols, with documentation of acceptance of the protocols by the medical staff of the agency;
- c. policies and procedures to include but not be limited to the following:
 - i. preparation of solution;
 - ii. initiation of infusion;
 - iii. responding to emergency situations;
 - iv. maximum dose per hour of an anesthetic agent which can be administered by a registered nurse, who is not a certified registered nurse anesthetist, as approved by the medical staff; and
 - v. criteria for documentation of the procedure.

2. No anesthetic agent may be administered by a registered nurse, who is not a certified registered nurse anesthetist pursuant to this part unless there is a medical

order by an authorized prescriber. Any orders to change the rate of infusion must be a medical order or in lieu of a specific order to change the rate of infusion, there are clearly stated criteria, by the authorizing prescriber, for adjusting the rate of infusion. However, in an emergency situation, the registered nurse may decrease the rate of infusion before calling the authorized prescriber.

B. Further, registered nurses, who are not certified registered nurse anesthetists, may titrate and continue infusion of local anesthetic agents through the use of epidural catheters and perineural catheters for pain management, excluding obstetric patients, provided that the following conditions are met.

1. There is documentation that the registered nurse has successfully completed a course of instruction, which includes but is not limited to didactic instruction and supervised clinical practice on the following:

- a. anatomy and physiology of the spinal cord and column and neurological system;
- b. purpose of the epidural and perineural catheter for pain management;
- c. catheter placement and signs and symptoms of misplacement;
- d. effects of medication administered epidurally and perineurally;
- e. untoward reaction to medication and management;
- f. complications; and
- g. nursing care responsibilities:
 - i. observation;
 - ii. procedures;
 - iii. catheter maintenance;
 - iv. proper calibration and operation of infusion pump; and
 - v. removal of the epidural or perineural catheter.

2. Competencies shall be measured initially during orientation and on an annual basis.

C. The administration of anesthetic agents to intubated patients in critical care settings, and the titration and continuance of infusion of local anesthetic agents through the use of epidural and perineural catheters for pain management for patients may not be delegated or assigned by a registered nurse to anyone other than a registered nurse who meets the criteria set forth in this standard.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:935.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Nursing, LR 32:246 (February 2006), amended 37:898 (March 2011).

Barbara L. Morvant, MN, RN
Executive Director

1103#063

RULE

Department of Health and Hospitals Board of Wholesale Drug Distributors

Wholesale Drug Distribution—Exemptions (LAC 46:XCI.105)

The Louisiana Board of Wholesale Drug Distributors has amended LAC 46:XCI.105 in accordance with the provisions of the Administrative Procedures Act, R.S. 49:950 et seq., and R.S. 37:3467 et seq., of the Louisiana Board of Wholesale Drug Distributors Practice Act. This Rule amendment will support the board's ability to license entities and regulate the wholesale distribution of legend drugs and devices into and within the state of Louisiana in its effort to safeguard the life and health of its citizens and promote the public welfare. The amendment to the Rule is set forth below.

Title 46

PROFESSIONAL AND OCCUPATION STANDARDS

Part XCI. Wholesale Drug Distributors

Chapter 1. General Provisions

§105. Wholesale Drug Distribution—Exemptions

A. Wholesale drug distribution does not include:

1. intra-company sales to licensed wholesale drug distributors physically located in Louisiana;
2. - 8. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 35:1537 (August 2009), amended LR 36:321 (February 2010), LR 37:899 (March 2011).

John Liggio
Executive Director

1103#002

RULE

Department of Health and Hospitals Bureau of Health Services Financing and Office of Aging and Adult Services

Home and Community-Based Services Waivers
Elderly and Disabled Adults
Personal Assistance Services
(LAC 50:XXI.8101, 8105, 8107, 8301,
8503, 8901, and 8903)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services has amended LAC 50:XXI.8101, §8105, §8107, §8301, §8503, §8901, and §8903 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title

XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

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

Subpart 7. Elderly and Disabled Adults Waiver

Chapter 81. General Provisions

§8101. Introduction

A. - B. ...

C. Requests for EDA waiver services shall be accepted from the following individuals:

1. an individual who wants to receive EDA Waiver services;
2. an individual who is legally responsible for a participant who may be in need of EDA Waiver services; or
3. a responsible representative designated by the participant to act on his/her behalf in requesting EDA Waiver services.

D. Each participant who requests EDA Waiver services has the option to designate a responsible representative. For purposes of these provisions, a responsible representative shall be defined as the person designated by the participant to act on his/her behalf in the process of accessing and/or maintaining EDA Waiver services.

1. The appropriate form authorized by OAAS shall be used to designate a responsible representative.

a. The written designation of a responsible representative does not give legal authority for that individual to independently handle the participant's business without his/her involvement.

b. The written designation is valid until revoked by the participant. To revoke the written designation, the revocation must be submitted in writing to OAAS or its designee.

2. The functions of a responsible representative are to:
a. assist and represent the participant in the assessment, care plan development and service delivery processes; and

b. to aid the participant in obtaining all necessary documentation for these processes.

3. The participant's responsible representative shall not be reimbursed for providing services to the participant.

4. An owner or employee of a EDA Waiver services agency may not be designated as a responsible representative for any recipient who receives services from an agency he/she owns or is employed by.

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 30:1698 (August 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:1245 (July 2006), amended by the Department Of Health and Hospitals, Office of Aging and Adult Services, LR 34:1029 (June 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:2447 (November 2009), amended LR 37:900 (March 2011).

§8105. Programmatic Allocation of Waiver Opportunities

A. ...

B. EDA Waiver opportunities shall be offered to individuals on the registry according to the following needs-based priority groups. The following groups shall have priority for EDA Waiver opportunities, in the order listed:

1. individuals with substantiated cases of abuse or neglect with Adult Protective Services or Elderly Protective Services who, absent EDA Waiver services, would require institutional placement to prevent further abuse and neglect;

2. individuals diagnosed with Amyotrophic Lateral Sclerosis (ALS);

3. individuals presently residing in nursing facilities for 90 or more continuous days;

a. - e. NOTE. Repealed.

4. individuals who are not presently receiving home and community-based services under another approved waiver program including, but not limited to the:

a. Adult Day Health Care Waiver;

b. New Opportunities Waiver;

c. Supports Waiver; and

d. Residential Options Waiver;

5. all other eligible individuals on the Request for Services Registry (RFSR), by date of first request for services.

C. - D. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:1699 (August 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:1245 (July 2006), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:1030 (June 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:2447 (November 2009), amended LR 37:900 (March 2011).

§8107. Resource Assessment Process

A. - C.1. ...

2. The applicant/recipient may qualify for an increase in the annual services budget amount upon showing that:

a. one or more answers are incorrect as recorded on the MDS-HC (with the exception of the answers in Sections AA, BB, A, and R of the MDS-HC); or

C.2.b. - D. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:2447 (November 2009), amended LR 37:900 (March 2011).

Chapter 83. Covered Services

§8301. Service Descriptions

A. Support Coordination is services that will assist recipients in gaining access to necessary waiver and State Plan services, as well as needed social, educational and other services, regardless of the funding source for these services. Support coordinators shall be responsible for ongoing monitoring of the provision of services included in the recipient's approved CPOC.

1. - 5.e. Repealed.

B. Transition intensive support coordination is services that will assist recipients who are currently residing in nursing facilities in gaining access to necessary waiver and State Plan services, as well as needed social, educational and

other services, regardless of the funding source for these services. Support coordinators will initiate and oversee the process for assessment and reassessment, as well as be responsible for ongoing monitoring of the provision of services included in the recipient's approved CPOC.

C. Environmental accessibility adaptation is necessary physical adaptations made to the home to ensure the health, safety, and welfare of the recipient, or enable the recipient to function with greater independence in the home. Without these necessary adaptations, the recipient would require institutionalization. These services must be provided in accordance with state and local laws governing licensure and/or certification.

1. There is a lifetime cap of \$3,000 per recipient for this service.

D. Personal Emergency Response System (PERS). This is an electronic device which enables the recipient to secure help in an emergency. PERS services are limited to specific recipients.

E. Personal Assistance Services (PAS) provides assistance to participants in performing the activities of daily living and household chores necessary to maintain the home in a clean, sanitary and safe environment, based on their CPOC.

1. PAS may also include the following services based on the CPOC:

a. protective supervision provided solely to assure the health and welfare of a participant with cognitive/memory impairment and/or physical weakness;

b. supervising or assisting, as approved in the CPOC, a participant with functional impairments with health related tasks (any health related procedures governed under the Nurse Practice Act) if he/she is unable to do so without supports according to applicable delegation/medication administration;

c. supervising or assisting the participant, who has no supports and is unable to do so without supports or has no available natural supports, to socialize in his/her community according to the desired outcomes included in the CPOC;

d. escort services, which are used to accompany the individual outside of the home during the performance of tasks related to instrumental activities of daily living and health maintenance, and to provide the same assistance as would be rendered in the home; and

e. extension of therapy services.

i. For purposes of these provisions, extension of therapy services may include instances where licensed practitioners may provide instruction to the worker so he/she is able to better assist the participant.

ii. Licensed therapists may choose to instruct the workers on the proper way to assist the participant in follow-up therapy sessions. This assistance and support provides reinforcement of instruction and aids in the rehabilitative process.

iii. A registered nurse may instruct a worker to perform basic interventions with participants that would increase and optimize functional abilities for maximum independence in performing activities of daily living, such as range of motion exercises.

2. PAS is provided in the participant's home unless the participant requests to receive PAS outside of the home.

a. PAS shall not duplicate the services provided to a participant who resides in an assisted living facility.

b. The participant must be present while PAS services are being provided in the home.

3. Service Restrictions

a. PAS shall not be provided during the same designated hours or time period that a participant receives adult day health care services.

b. Participants who receive PAS cannot receive long-term personal care services.

4. PAS services may be provided by one worker for up to three waiver participants who live together and who have a common direct service provider.

a. Waiver participants may share PAS service staff when it is agreed to by the participants and health, safety and welfare can be assured for each individual.

b. Shared PAS services will be reflected on the plan of care of each participant.

5. The following individuals are prohibited from being reimbursed for providing services to a participant:

a. the participant's spouse;

b. the participant's curator;

c. the participant's tutor;

d. the participant's legal guardian;

e. the participant's responsible representative; or

f. the person to whom the participant has given representative and mandate authority (also known as power of attorney).

6. Participants are not permitted to receive PAS while living in a home or property owned, operated, or controlled by a provider of services who is not related by blood or marriage to the participant.

F. Transition Services. These services assist an individual, who has been approved for an EDA Waiver opportunity, to leave a nursing facility and return to live in the community.

1. Service Limit. Funds are available one time per lifetime for specific items as approved in the recipient's CPOC.

G. Adult Day Health Care (ADHC). ADHC services are a planned, diverse daily program of individual services and group activities structured to enhance the recipient's physical functioning and to provide mental stimulation. Services are furnished for five or more hours per day (exclusive of transportation time to and from the ADHC facility) on a regularly scheduled basis for one or more days per week, or as specified in the plan of care. An adult day health care facility shall, at a minimum, furnish the following services:

1. individualized training or assistance with the activities of daily living (toileting, grooming, eating, ambulation, etc.);

2. health and nutrition counseling;

3. an individualized, daily exercise program;

4. an individualized, goal directed recreation program;

5. daily health education;

6. medical care management;

7. one nutritionally balanced hot meal and two snacks served each day;

8. nursing services that include the following individualized health services:

a. monitoring vital signs appropriate to the diagnosis and medication regimen of each recipient no less frequently than monthly;

b. administering medications and treatments in accordance with physicians' orders;

c. monitoring self-administration of medications while the recipient is at the ADHC facility; and

NOTE: All nursing services shall be provided in accordance with acceptable professional practice standards.

d. transportation to and from the facility.

NOTE: If transportation services that are prescribed in any participant's approved CPOC are not provided by the ADHC facility, the facility's reimbursement rate shall be reduced accordingly.

H. Providers of EDA waiver services must have a valid, current license for their respective service program, if applicable, and furnish services in accordance with the applicable licensing and/or certification requirements.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:1699 (August 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:1245 (July 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:2448 (November 2009), amended LR 37:900 (March 2011).

Chapter 85. Admission and Discharge Criteria

§8503. Admission Denial or Discharge Criteria

A. Admission shall be denied or the participant shall be discharged from the EDA Waiver Program if any of the following conditions are determined.

1. - 7. ...

8. It is not cost effective or appropriate to serve the individual in the EDA waiver.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:1699 (August 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:1246 (July 2006), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:1030 (June 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:902 (March 2011).

Chapter 89. Provider Responsibilities

§8901. General Provisions

A. Any provider of services under the EDA waiver shall abide by and adhere to any federal or state laws, rules, policy, procedures, or manuals issued by the department. Failure to do so may result in sanctions.

B. The provider agrees to not request payment unless the participant for whom payment is requested is receiving services in accordance with the EDA Waiver Program provisions.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:1700 (August 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:1247 (July 2006), amended by the Department of Health and Hospitals,

Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:902 (March 2011).

§8903. Reporting Requirements

A. Support coordination and direct service providers are obligated to report changes to the department that could affect the waiver participant's eligibility including, but not limited to, those changes cited in the denial or discharge criteria.

B. Support coordination and direct service providers are responsible for documenting the occurrence of incidents or accidents that affect the health, safety and welfare of the recipient and completing an incident report. The incident report shall be submitted to the department with the specified requirements.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:902 (March 2011).

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

Bruce D. Greenstein
Secretary

1103#012

RULE

Department of Health and Hospitals Bureau of Health Services Financing

Nursing Facilities—Reimbursement Rate Reduction (LAC 50:II.20005)

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 50:II.20005 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R. S. 49:950 et seq.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part II. Nursing Facilities

Subpart 5. Reimbursement

Chapter 200. Reimbursement Methodology

§20005. Rate Determination

A. - F. ...

G. Effective for dates of service on or after July 1, 2010, the per diem rate paid to non-state nursing facilities shall be reduced by an amount equal to 4.8 percent of the non-state owned nursing facilities statewide average daily rate on file as of July 1, 2010 until such time as the rate is rebased.

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 28:1791 (August 2002), amended LR 31:1596 (July 2005), LR 32:2263 (December 2006), LR 33:2203 (October 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:325 (February 2010), repromulgated LR 36:520 (March 2010),

Bruce D. Greenstein
Secretary

1103#101

RULE

Department of Health and Hospitals Bureau of Health Services Financing

Nursing Facilities Transition of State-Owned or Operated Nursing Facility (LAC 50:II.20023)

The Department of Health and Hospitals, Bureau of Health Services Financing has adopted LAC 50:II.20023 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part II. Nursing Facilities

Subpart 5. Reimbursement

Chapter 200. Reimbursement Methodology

§20023. Transition of State-Owned or Operated Nursing Facility to a Private Facility

A. A state owned or operated nursing facility that changes ownership (CHOW) in order to transition to a private nursing facility will be exempt from the case-mix direct care and care-related spending floor for a period of 12 months following the effective date of the CHOW under the following conditions:

1. the state-owned or operated facility is located in the DHH administrative region 1; and
2. the change of ownership is the result of a leasing arrangement.

B. Cost Reports

1. The previous owner of the nursing facility must file a closing cost report within 60 days of the CHOW for the time period that spans from the beginning of the facility's cost report period to the date of the CHOW.

2. The initial cost report period following the CHOW will be determined based on the elected fiscal year end of the new facility.

3. The closing and initial cost reports must be filed in accordance with the provisions of §20003, including the filing of all Medicaid supplemental schedules.

C. A capital data survey must be filed with the department within 60 days of the effective date of the CHOW. The capital data survey must include the nursing facility's date of construction, current square footage, and all renovations made since the facility's opening.

D. Rate Determination

1. During the transition period (12 months following the effective date of the change of ownership), the Medicaid reimbursement rate for the transitioned nursing facility shall be the per diem rate on file as of March 19, 2010 for the state-owned or operated facility.

2. The transitioned nursing facility will be transferred to the case-mix reimbursement system at the end of the 12 month transition period.

3. The Medicaid reimbursement rate and direct care/care-related floor shall be calculated in accordance with the provisions of §20005.

a. The direct care/care-related floor will be effective on the date of transition to the case mix reimbursement system.

b. For purposes of this initial floor calculation, direct care and care-related spending will be determined by apportioning cost report period costs based on calendar days.

4. Under the case mix reimbursement methodology, the facility will file cost reports in accordance with the provisions of §20003, including all Medicaid supplemental schedules.

a. If the nursing facility's cost report period overlaps the date of transition to the case mix reimbursement methodology, the case mix direct care and care-related floor will only be applied to the portion of the cost report period that occurs after the date of transition to case mix.

5. Until the nursing facility has an audited or desk reviewed cost report that is available for use in a case mix rebase in accordance with the provisions of §1305.B, the case mix reimbursement rate components will be based on the following criteria except as noted in Subsection D.6 of this Section.

a. The facility's acuity as determined from its specific case mix index report for the quarter prior to the effective date of the rate.

b. The direct care and care-related statewide median prices in effect for that period.

i. The statewide direct care and care related price shall be apportioned between the per diem direct care component and the per diem care related component using the nursing facility's most recent non-disclaimed audited or desk reviewed cost report.

ii. The facility-specific percentages will be determined using the methodology described in §20005.D.1.c.

c. The administrative and operating statewide median prices in effect for that period.

d. The capital data for the fair rental value rate component will be calculated from the facility-submitted capital data survey and the occupancy percentage from the most recent non-disclaimed audited or desk reviewed cost report as of the effective date of the rate.

e. The facility's property insurance cost will be calculated from the most recent non-disclaimed audited or desk reviewed cost report as of the rate effective date.

f. The property tax cost will be collected in the form of an interim property tax report specified by the department.

i. The interim property tax report must be filed within 30 days after the beginning of the nursing facility's cost reporting period.

ii. Failure to provide the interim property tax report within the specified time frame will result in a \$0 reimbursement rate for the property tax rate component.

iii. The facility must continue to file an interim property tax report until the facility is able to produce a non-

disclaimed audited or desk reviewed cost report that contains property tax cost.

g. Provider fee and budget adjustments in effect for all other case mix facilities will be applicable.

6. A disclaimed cost report that would otherwise be used in a rebase will result in a rate calculated in accordance with the provisions of §20011 and the provisions contained in Subsection D.3.a-b and D.4.a of this Section will no longer be applicable.

7. If additional data is needed, the department may request that the facility submit Medicaid supplemental cost report schedules for those cost report period year ends for which the facility has not previously submitted Medicaid supplemental schedules.

E. If there is a subsequent CHOW which results in the nursing facility reverting to a state-owned or operated facility, then the reimbursement methodology for a state-owned or operated nursing facility will be reinstated following the effective date of the CHOW and all other provisions of this Section will no longer be applicable.

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 37:903 (March 2011).

Bruce D. Greenstein
Secretary

1103#102

RULE

Department of Health and Hospitals Bureau of Health Services Financing

Professional Services Program—Physician Services Obstetrics Rate Increase (LAC 50:IX.15113)

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 50:IX.15113 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part IX. Professional Services Program

Subpart 15. Reimbursement

Chapter 151. Reimbursement Methodology

Subchapter B. Physician Services

§15113. Reimbursement

A. - H. ...

I. Effective for dates of service on or after December 1, 2010, reimbursement shall be 90 percent of the 2009 Louisiana Medicare Region 99 allowable for the following obstetric services when rendered to recipients 16 years of age and older:

1. vaginal-only delivery (with or without postpartum care);
2. vaginal delivery after previous cesarean (VBAC) delivery; and
3. cesarean delivery following attempted vaginal delivery after previous cesarean delivery. The

reimbursement for a cesarean delivery remains at 80 percent of the 2009 Louisiana Medicare Region 99 allowable when the service is rendered to recipients 16 years of age and older.

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 36:1252 (June 2010), amended LR 36:2282 (October 2010), amended LR 37:904 (March 2011).

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

Bruce D. Greenstein
Secretary

1103#103

RULE

Department of Health and Hospitals Office of Aging and Adult Services Division of Adult Protective Services

Definition of Abuse and Sexual Abuse (LAC 48:XIII.17105)

The Department of Health and Hospitals, Office of Aging and Adult Services, Division of Adult Protective Services has amended LAC 48XIII.17105 under the Adult Protective Services Program as authorized by R.S. 15:1501-1511. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

During the 2008 Regular Session of the Louisiana Legislature, the Louisiana Revised Statute which authorizes the Adult Protective Services program (R.S. 14:403.2) was amended and portions of the statute were placed in R.S. 15:1501-1511. At the same time, the Office of Aging and Adult Services was created within the Department of Health and Hospitals and the Bureau of Protective Services was transferred into that office becoming the Division of Adult Protective Services within that office.

During the 2010 Regular Session of the Louisiana Legislature, R.S. 15:1503(2) was amended and reenacted and R.S. 15:1503(13) was enacted in order to amend the definition of "abuse" and to provide for a definition of "sexual abuse." This Rule is promulgated to adopt the changes created by the legislation.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 13. Protective Services Agency

Chapter 171. Division of Adult Protective Services

§17105. Definitions

A. For the purposes of this Chapter, the following definitions shall apply.

Abuse—the infliction of physical or mental injury, or actions which may reasonably be expected to inflict physical injury, on an adult by other parties, including but not limited to such means as sexual abuse, abandonment, isolation,

exploitation, or extortion of funds or other things of value. In determining whether an injury is sufficient to endanger the health, self-determination, or emotional well-being of the adult, the following criteria shall be considered:

Sexual Abuse—abuse of an adult, when any of the following occur.

a. The adult is forced, or otherwise coerced by a person into sexual activity or contact.

b. The adult is involuntarily exposed to sexually explicit material, sexually explicit language, or sexual activity or contact.

c. The adult lacks the capacity to consent, and a person engages in sexual activity or contact with that adult.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 14:403.2 and R.S. 15:1501-15:1511

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Protective Services, LR 20:435 (April 1994), amended LR 27:312 (March 2001), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, Division of Adult Protective Services, LR 37:904 (March 2011).

Bruce Greenstein
Secretary

1103#022

RULE

Department of Labor State Plumbing Board

Continuing Professional Education Programs (LAC 46:LV.1003 and 1005)

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 development for the renewal or reinstatement of any license or special endorsement issued by the board, has amended plumbing regulations, LAC 46:LV.1003 and 1005, in accordance with the Administrative Procedure Act. The Rule change allows the board to accept an endorsee's attendance or participation in a board approved industry-related recertification programs in lieu of a board-approved CPE class, effective upon final publication in the *Louisiana Register*.

All currently stated rules of the board, unless amended herein, shall remain in full force and effect.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LV. Plumbers

Chapter 10. Continuing Professional Education Programs

§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 six 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 the prior three calendar years.

B. - E.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).

§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, every three years all persons seeing 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 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 the prior three calendar years.

B. - E.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).

Louis L. Robein
Board Attorney

1103#003

RULE

Department of Natural Resources Office of Conservation

Water Wells (LAC 56:I.Chapters 1-7)

The Louisiana Office of Conservation has amended 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 amendments address numerous typographical changes necessary as a result of Act 437 of 2009 which transferred the 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.

Additionally this amends the provisions of LAC 56:I, Sections 117 and 119 to re-define the phrase, "as accurately as possible," to include providing specific latitudinal and longitudinal coordinates in addition to a general hand drawn location on the water well registration forms.

**Title 56
PUBLIC WORKS**

Part I. Water Wells

Chapter 1. Registering Water Wells

§101. Authorization

A. ...

B. 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.

C. ...

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 Department of Natural Resources, Office of Conservation, LR 37:906 (March 2011).

§105. Registration of Water Wells and Holes

Completed on or after November 1, 1985

A. The contractor who drills or constructs a well or hole on or after November 1, 1985 shall be responsible for registering that well or hole by submitting to the department a completed water well registration Form within 30 calendar days after completing such well or hole. Registration requirements shall apply to all water wells, regardless of yield or use, including but not limited to, public supply, domestic, irrigation/agriculture, power generation, rig-supply, observation, dewatering, monitoring, and heat pump supply wells, as well as test holes, abandoned pilot holes, and heat pump holes. For glossary of terms, refer to §113 of this Chapter.

B. - B.3. ...

C. Water Well Registration Long Form (DNR-GW-1). The Water Well Registration Long Form (DNR-GW-1) shall be used to register the following types of wells and holes:

1. - 8. ...

For long form instructions see §117.

D. Water Well Registration Short Form (DNR-GW-1S). The Water Well Registration Short Form (DNR-GW-1S) shall be used to register the following types of wells and holes:

1. - 6. ...

For short form instructions see §119.

E. Submission of Water Well Registration Forms

1. ...

2. For registration purposes only, the department considers a well or hole completed when it is accepted by the owner or when the contractor has moved his equipment from the site, whichever comes first. Acceptance by the owner or removal of equipment from the site by the contractor does not imply, in any way, acceptance or approval by the state of Louisiana. The department, after reviewing applicable records and/or inspection of the well site, can cause the owner and/or the contractor to do whatever additional work is necessary to bring the well or hole up to standards. The expense for the additional work shall be borne by the owner or the contractor, as the case may be.

3. For the purpose of registering heat pump holes only, one form (DNR-GW-1S) Short Form per project (site) will suffice. Under item marked "remarks," materials and method used to seal the holes shall be indicated. Driller's log description of cuttings should be the typical formations encountered at the site.

4. Registration forms may be submitted to the department on a monthly basis as long as the 30-day limitation is not exceeded. Forms that are illegible, have incomplete items, lack a sketch or directions to the well, do not include latitudinal and longitudinal coordinates or have not been signed and dated will be rejected by the department and will be returned to the contractor for correction and resubmittal. It is the responsibility of the contractor to see to it that the submitted registration forms are actually received by the department.

E.5. - G1. ...

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.

H. ...

1. the subcontractor who drills the well shall keep an accurate record of the pertinent data to be used in completing the registration form; however, the name and license number of the original contractor must be shown on the upper right-hand corner of the registration form, and it is the original contractor who is responsible for signing and transmitting the form to the department in accordance with the procedures outlined in §105.E. The subcontractor may write his or his company's name and license number at the space designated for "remarks."

I. Registration of Rig-Supply Water Wells

1. In order to register a rig-supply water well, each registration form must be accompanied by a copy of the "registered" permit plat reflecting the section, township, range and the distances from the section lines to the location of the well (oil, gas, injection, etc.). The plat will be used by the department to verify the latitude and longitude of the well. The water well contractor who drilled the water well shall obtain a copy of the plat from the company in charge of the drilling of the oil or gas well (lessee) or from the operator of the oil or gas drilling rig and shall attach it to the registration form for transmittal to the department. Alternatively, the water well contractor may send the registration form to the lessee with appropriate instructions for them to attach the plat to the registration form and transmit it to the department.

2. ...

J. Registration of Monitoring Wells. Although construction of monitoring wells for facilities regulated by the Department of Environmental Quality (DEQ) requires approval from DEQ prior to construction, they shall be registered with the Office of Conservation, like all other water wells, as part of the state's effort to catalog well sites and to collect and provide data on the geohydrological system. In order to register a monitoring well, the drilling contractor, in addition to completing all items on the Water Well Registration Short Form (DNR-GW-1S), must also complete the spaces provided for the latitude and longitude

of the well location, as well as the section, township and range.

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 Department of Natural Resources, Office of Conservation, LR 37:906 (March 2011).

§107. Registration of Water Wells Completed Prior to November 1, 1985

A. - C. ...

1. All wells used to supply a public water system regardless of yield, and all other water wells capable of producing more than 50,000 gallons per day, which were constructed on or after July 1, 1975, shall be registered by the owner by completing a water well registration long form (DNR-GW-1) for each well and sending them to the department for verification and registration within 90 calendar days after the effective date of these regulations.

2. - 4. ...

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 11:951 (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 37:907 (March 2011).

§113. Definitions

A. ...

* * *

Assistant Secretary—the Assistant Secretary of the Office of Conservation, Department of Natural Resources, or his designee.

* * *

Department—the Louisiana Department of Natural Resources, Office of Conservation.

* * *

Electrical Log—a record of the resistivity of the subsurface formations and the contained fluid and spontaneous potentials generated in the borehole, both plotted in terms of depth below some datum, such as land surface. Similar logs commonly made in boreholes are the induction logs. Other borehole geophysical logs that also may be available are the gamma ray, caliper and neutron logs.

* * *

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 Department of Natural Resources, Office of Conservation, LR 37:907 (March 2011).

§117. Water Well Registration (Long Form)

A. The Water Well Registration Long Form (DNR-GW-1) and detailed instructions for properly completing the form are available by contacting department staff at (225) 342-8244 or by accessing the department's website at

www.dnr.louisiana.gov/gwater. The long form consists of a set of three copies. The first copy (marked DNR copy) is to be mailed by the water well contractor within 30 calendar days after the well has been completed to:

Department of Natural Resources
Office of Conservation
P.O. Box 94275
Baton Rouge, La 70804-9275

B. The second copy of the form is to be retained by the water-well contractor for his files, and the third copy is to be given to the well owner immediately upon completion of the work. The commissioner will consider and encourages the electronic submission of registration, data or reports required under this Section.

C. Although most of the information needed to complete the form is available to the water well contractor, the following explanation will provide clarification of intent for selected items and uniformity of reporting.

D. Owner Information. List the name of the legal owner of the property on which the well is located or the person or company holding a long-term lease on the property. If the owner or lessee is an individual, list first and last names and middle initial of individual. List area code and telephone number of owner in the spaces provided.

1. Address. The address should be that of the owner. If the well is owned by an industry, the local address of the firm is preferred in order that additional data on the well may be easily obtained by the state or a regional water district or commission.

2. Owner's Well Number. Many cities, institutions, industrial plants, and large farms have their own system of designating or identifying wells by number and/or name. This information is useful when locating the well and should be entered on the form.

E. Well Location. List the parish where the well is located, including the nearest town, city, etc., and give directions to the well site. The location of the well should be described in detail and as accurately as possible so that the well can be easily located by the department's staff or field inspector. Please include a detailed map or sketch on the back of the original form, showing location of well with reference to roads, railroads, buildings, etc. Use an (X) to indicate location of the well. Show location of nearest existing well(s), if any nearby, by marking (Os), and approximate distance between wells. Determine the well's Global Positioning System (GPS) location and record the GPS longitude and latitude coordinates onto the form.

F. Well Information. Required data are available from water well contractor's and/or engineer's report.

G. Casing and Screen Information. Required data are available from water well contractor's and/or engineer's report. By type of screen indicate whether it is "bar lug" rib type, slotted pipe, etc. State whether casing is plastic or metal. Indicate the depth to which the annular space was cemented and state method of cementing.

H. Water Level and Yield Information. Most of the information entered on the form can usually be obtained from the water well contractor's or engineer's report. Except for "static water level," the terms need no explanation. Static water level is "the nonpumping water level in a well that has not been in operation for a period of time and is usually expressed in feet above or below a specified datum, such as

land surface." The owner should be able to provide information on proposed use and pumping rate.

I. Use of Well. The principal purpose for which water from the well is used should be indicated where appropriate on the form. If water is used for more than one purpose, only the principal or primary use should be shown. If the planned use of water is unknown or does not fit one of the specified uses, this should be noted in the space marked "other." Following are explanations of the terms used on the well registration form to indicate the principal use of water from a well.

1. ...

2. Industrial. Includes plants that manufacture, process or fabricate a product. The water may or may not be incorporated into the product being manufactured. Industrial water may be used to cool machinery, to provide sanitary facilities for employees, to air-condition the plant, and water grounds at the plant. Water used for mining or to process ore such as gravel pits is included in the industrial category. Planning and water-use needs can be implemented by dividing this category into the following standard industrial categories that predominate in Louisiana. Indicate the principal category of industrial use on the form where appropriate. The categories are defined as follows:

2.a. - 3.b. ...

c. Because public supply use includes many categories of use, requirements for planning and water-use surveys require a further break-down of this use; thus, public supply use is divided into the following categories: (A list is provided on the registration form (refer to §117) so that the user may select the appropriate category of public supply use.)

3.d. - 7. ...

8. Other. A well that is used for the purpose that does not fit into either the above categories or those listed on the short form (DNR-GW-1S).

J. Available Information. Please indicate where appropriate on the form whether the specified logs or data were collected; if so, attach copies to the registration form for transmittal to the department.

K. Abandonment Information. If the well is new, specify whether or not it replaces an existing well. The water well contractor is responsible for informing the owner of the well of state regulations requiring plugging of abandoned wells. This item is intended to serve as a reminder.

L. Remarks. This space can be used for presenting any other pertinent information, such as name of consulting engineer, screen openings, pump information, name of subcontractor, etc.

M. Driller's Log. Give a description of the materials encountered and depth. If space on front of the form is insufficient, continue driller's log on reverse side of original form or attach a copy of the driller's log to the original form to be transmitted to the department.

1. After completing the form, list the name of the water well contracting company and the license number on the space provided. Sign and date the form and mail the original to the department at the address listed on the form within 30 calendar days after the well has been completed. The owner's copy shall be given to the owner immediately upon completion of the work. The contractor's copy shall be retained by the contractor for his files.

2. If there are any questions, please call or write:

Louisiana Department of Natural Resources
Office of Conservation
P.O. Box 94275
Baton Rouge, LA 70804-9275
Phone: (225) 342-8244

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 1:249 (May 1975), amended LR 11:971 (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 37:907 (March 2011).

§119. Water Well Registration (Short Form)

A. The Water Well Registration Short Form (DNR-GW-1S) and detailed instructions for properly completing the form are available by contacting department staff at 225-342-8244 or by accessing the department's website at www.dnr.louisiana.gov/gwater. The short form consists of a set of three copies. The first copy (marked DNR copy) is to be mailed by the water well contractor within 30 calendar days after the well has been completed to: Louisiana Department of Natural Resources, Office of Conservation, P.O. Box 94275, Baton Rouge, LA 70804-9275.

B. The second copy of the form shall be retained by the water well contractor for his files and the third copy shall be given to the well owner immediately upon completion of the work. The commissioner will consider and encourages the electronic submission of registration, data or reports required under this section.

C. Although most of the information needed to complete the form is available to the water well contractor, the following explanation will provide clarification of intent for selected items and uniformity of reporting:

1. Use of Well. The principal purpose for which the well is used should be indicated by checking the appropriate box on the form. If the well is used for more than one purpose, only the principal or primary use should be shown.

a. - f. ...

g. Other. A well used for a purpose that does not fit into either the above categories or those requiring a long form (DNR-GW-1).

2. Owner Information. List the name of the legal owner of the property on which the well is located or the person or company holding a long-term lease on the property. If the owner or lessee is an individual, list first and last names and middle initial of individual. List area code and telephone number of owner in the spaces provided.

3. Owner's Address. List full and correct address of the owner.

4. Owner's Well Number. List name or number the well owner has assigned to the well.

5. Well Information. List in appropriate spaces, completion date of well, depth of hole, depth of well, static water level, casing type, size and length, screen size, type and length, the depth to which the casing was cemented, and cementing method used.

6. Well Location. List the parish where the well is located, including the nearest town, city, etc., and give directions to the well site. The location of the well should be described in detail and as accurately as possible so that the well can be easily located by the department's staff or field

inspector. Please include a detailed map or sketch on the back of the original form showing the location of the well with reference to roads, railroads, buildings, etc. Use an (X) to indicate location of the well. Show location of nearest existing well(s), if any nearby, by making (Os) and approximate distance between wells. Determine the well's Global Positioning System (GPS) location and record the GPS longitude and latitude coordinates onto the form. For rig-supply wells, attach a "registered" permit plat (see §105.I) and for monitoring wells, complete spaces provided for the section, township and range (see §105.J).

7. Remarks. This space can be used for presenting any other information, such as screen openings, pump information, problems encountered during drilling, name and license number of water-well subcontractors, method and materials used to seal heat pump hole, etc.

8. Driller's Log. List in the space provided a description of the materials encountered and depth. If space on front of the form is insufficient, continue driller's log on reverse side of original form or attach a copy of the driller's log to the original form to be transmitted to the department.

9. Heat Pump Holes. List average depth of holes and number of holes drilled at the site. Indicate type of tubing material used by checking appropriate box. Method and materials used to seal holes shall be stated under item marked "remarks."

10. Abandonment Information. If the well is new, specify whether or not it replaces an existing well. The water well contractor is responsible for informing the owner of the well of state regulations requiring plugging of abandoned wells.

D. After completing the form, list the name of the water well contracting company and the license number on the spaces provided. Sign and date the form and mail the original to the department at the address listed on the form within 30 calendar days after the well has been completed. The owner's copy shall be given to the owner immediately upon completion of the work. The contractor's copy shall be retained by the contractor for his files.

E. If there are any questions or you need assistance, please call or write to:

Louisiana Department of Natural Resources
Office of Conservation
P.O. Box 94275
Baton Rouge, LA 70804-9275
Phone: (225) 342-8244

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 Public Works, LR 1:249 (May 1975), amended LR 11:974 (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 37:908 (March 2011).

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. The rules, regulations and standards stated herein became effective on November 1, 1985 and supersede the rules, regulations and standards for water well construction which had been in effect since December 20, 1975.

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 Department of Natural Resources, Office of Conservation, LR 37:909 (March 2011).

§305. Approval of Plans and Specifications for Public Water Supply Systems

A. - B. ..

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 Human Resources, Office of Preventive and Public Health Services, and they are intended to eliminate duplication of efforts and requirements by the two agencies, thereby minimizing cost and optimizing operating efficiencies.

D. Part XII of the State Sanitary Code (LAC 51:XII) requires that no public water supply shall be constructed, operated or modified without review and approval of the state health officer. Detailed plans and specifications shall be submitted to the appropriate Department of Health and Hospitals regional office by the person having responsible charge for a municipally owned water supply or by the owner of a privately owned public water supply for review and approval before construction, modification, or operation of such system has commenced.

E. The water well contractor shall construct the well in accordance with the applicable provisions of this Chapter and shall submit a Water Well Registration Long Form (DNR-GW-1) to the department within 30 calendar days after completing the well, as required by Subsection B of the rules, regulations and procedures for registering water wells and holes.

F. All questions relating to the quality of water, as it pertains to its effect on human health, shall be referred by the owner, engineer or water well contractor to the following:

Department of Health and Hospitals
Office of Public Health
P. O. Box 4489
Baton Rouge, LA 70821-4489
Phone: (225) 342-7499

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 Department of Natural Resources, Office of Conservation, LR 37:909 (March 2011).

§311. Variance Requests

A. Requests to vary from the rules, regulations and standards for constructing water wells and holes 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) 342-8244

B. ...

C. Requests to vary from the provisions of the State Sanitary Code (LAC 51) relating to the sanitary features of the public supply water systems, and for questions related to the quality of water as it pertains to human health, shall be addressed to the following:

Department of Health and Hospitals
Office of Public Health
P. O. Box 4489
Baton Rouge, LA 70821-4489
Phone: (225) 342-7499

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 Department of Natural Resources, Office of Conservation, LR 37:910 (March 2011).

§319. Location in Relation to Flood Water

A. - C. ...

D. Flood information may be obtained from the U.S. Geological Survey or the administering agency of the Federal Insurance Program (i.e., municipality, police jury, regional planning authorities or the Department of Urban and Community Affairs).

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 Department of Natural Resources, Office of Conservation, LR 37:910 (March 2011).

§323. Drilling and Construction

A. - B. ...

C. When drilling a hole the contractor shall:

1. record the hole diameter and any changes in size of hole;

C.2. - L.5 ...

6. Abandoned monitoring wells shall be plugged in accordance with requirements of §531.

Note: Construction of Monitoring Wells for facilities regulated by the department of Environmental Quality (DEQ) require approval from DEQ prior to construction.

M. - P. ...

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), amended Department of Natural Resources, Office of Conservation, LR 37:910 (March 2011).

§327. Screen

A. - K.1. ...

2. If required, a properly graded gravel pack shall be selected based upon an evaluation of the sieve analysis for the sands in the formation. The uniformity coefficient (see §113 of this Chapter for glossary of terms) of the selected gravel pack material should be 2.5 or less. The gravel envelope, usually 3 to 8 inches thick, should consist of clean, well-rounded siliceous material that will permit the selection of screen openings that will retain 90 percent or more of the gravel pack material by size. Limestone and shale shall not be used as a gravel pack.

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 Department of Natural Resources, Office of Conservation, LR 37:910 (March 2011).

§331. Well Development and Disinfection

A. - 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 Partr XII of the state Sanitary Code (LAC 51:XII), if water is to be used for drinking, cooking or washing purposes. Negative bacteriological analysis of water, performed by the Department of Health and Hospitals (DHH) or by a laboratory certified by DHH, shall be required for all public supply and domestic water wells.

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 11:958 (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 37:910 (March 2011).

§333. Standards for Miscellaneous Appurtenances

A. - B. ...

C. Concrete Slab

1. When concrete slabs are placed around water wells at ground surface, they should be at least 4 inches thick and extending at least 2 1/2 feet from the well in all directions. The surface of the slab shall be sloped to drain away from the well. The top of the casing shall be at least 1 foot above the top of the slab (see §319.A for flood prone areas). Prior to the slab installation, the contractor shall seal the annular space in accordance with §329. The placement of a slab shall not be considered a substitute for the placement of cement-bentonite slurry in the annular space between the hole and the casing.

C.2. - 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 Department of Natural Resources, Office of Conservation, LR 37:910 (March 2011).

Chapter 5. Plugging and Sealing of Abandoned Water Wells and Holes

§501. Organization

A. As announced in the October 1985 issue of the *Louisiana Register*, the rules, regulations and standards, stated herein, were prepared by the Louisiana Department of Transportation and Development, Office of Public Works, in accordance with R.S. 38:3091-38:3097. 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.

B. The rules, regulations and standards, stated herein, became effective on November 1, 1985 and supersede the rules, regulations, standards and methods for plugging and sealing of abandoned water wells and holes which had been in effect since September 1, 1975.

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 Department of Natural Resources, Office of Conservation, LR 37:911 (March 2011).

§505. General Rules and Regulations

A. In 1972, the Louisiana Legislature enacted State Act 535, which authorized the authorizing agency to promulgate reasonable rules and regulations relating to the plugging of abandoned water wells. Section A-6 of this Act (R.S. 38:3094) states that the authorizing agency shall:

* * *

B. - 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 Department of Natural Resources, Office of Conservation, LR 37:911 (March 2011).

§511. Licensing Requirements

A. - B.1. ...

2. In addition to the domestic wells referred to in §511.B.1, a person may plug an abandoned well or hole on his own or leased property provided that the person has the required equipment and knowledge for properly plugging the well or hole, in accordance with the rules, regulations, and standards stated herein, to the satisfaction of the department, and provided that the person has obtained departmental approval for plugging the well or hole himself, and provided that such approval is obtained prior to the beginning of the plugging operation. The owner shall complete and submit a Water Well Plugging and Abandonment Form (DNR-GW-2) to the department within 30 calendar days after completion of the plugging operation.

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).

§513. Variance Requests

A. ...

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).

§515. Submission of Water Well Plugging and Abandonment Forms (DNR-GW-2)

A. The contractor who plugs an abandoned well or hole shall complete and submit to the department the original copy of the Water Well Plugging and Abandonment Form (DNR-GW-2) within 30 calendar days after the completion of the work. The owner's copy shall be sent to the owner immediately after completion of the work, and the contractor shall retain the contractor's copy for his files. For reporting purposes only, the department considers the work completed when the work is accepted by the owner or when the contractor has moved his equipment from the site; whichever comes first. Acceptance by the owner or removal of equipment from the site by the contractor does not imply, in any way, acceptance or approval by the state of Louisiana. The department, after inspection of the site and records (refer to §523), can require the owner and/or the contractor to do whatever additional work is necessary to properly plug and seal a hole or well in accordance with the standards stated herein. The expense for the additional work shall be borne by the owner and/or the contractor, as the case may be.

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).

§516. Water Well Plugging and Abandonment Form (DNR-GW-2)

A. The Water Well Plugging and Abandonment form (DNR-GW-2) and detailed instructions for properly completing the form are available by contacting department staff at 225-342-8244 or by accessing the department's website at www.dnr.louisiana.gov/gwater. Form DNR-GW-2 consists of a set of three copies.

1. The first copy (marked DNR copy) is to be mailed by whoever plugs the well or hole within 30 calendar days after plugging operations have been completed to:

Louisiana Department of Natural Resources
Office of Conservation
P.O. Box 94275
Baton Rouge, LA 70804-9275

B. - B.2. ...

C. The commissioner will consider and encourages the electronic submission of registration, data or reports required under this Section.

D. The following explanation will provide clarification of intent for selected items and uniformity of reporting.

1. Owner Information. List the name of the legal owner of the property on which the well is located or the person or company holding a long-term lease on the property. If the owner or lessee is an individual, list first and last names and middle initial of individual.

a. Address. The address should be that of the owner. If the well is owned by an industry, the local address of the firm is preferred in order that additional data on the well may be easily obtained by the state or a regional water district or commission.

b. Owner's Well Number. Many cities, institutions, industrial plants, and large farms have their own systems of designating or identifying wells by numbers and/or name. This information is useful when locating the well and should be entered on the form.

2. Well Location. List the parish where the well is located, including the nearest town, city, etc., and give directions to the well site. The location of the well should be described in detail and as accurately as possible so that the well can be easily located by the department's field inspector. Please include a detailed map or sketch on the back of the original form showing the location of the well with reference to roads, railroads, building, etc. Use an (X) to indicate location of the well. Show location of nearest existing well(s), if any nearby, by making (O's) and approximate distance between wells. Determine the well's Global Positioning System (GPS) location and record the GPS longitude and latitude coordinates onto the form. For rig-supply wells, attach a "registered" permit plat (see §105.I) and for monitoring wells, complete spaces provided for the section, township and range (see §105.J).

3. Well Information. Required data are available from water well contractor's or engineer's report.

4. Plugging Procedure. Describe, in detail, the method and materials used to plug the well or hole. Give amount of cement, bentonite, and water used. Give any other useful information, such as name of cementing company used, if any, sounded depth, any obstructions or problems encountered during plugging, size and length of casing removed or left in hole, etc. If necessary, attach another sheet or use reverse side of form to give details.

5. Remarks. Use this space to present any other pertinent information. For example, if the present owner is different than the person who had the well drilled, give the name of the initial owner.

E. Certification that the work was performed in accordance with applicable rules and regulations must be signed and dated or the form will be returned for proper completion.

F. If there are any questions, please call or write to:

Louisiana Department of Natural Resources
Office of Conservation
P.O. Box 94275
Baton Rouge, LA 70804-9275
Phone: (225) 342-5562

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3091-3097.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 11:976 (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).

§521. Responsibilities of the Contractor

A. The contractor who agrees to plug an abandoned well or hole for the owner shall be fully responsible for plugging the well or hole in accordance with the rules, regulations and standards stated herein. He is also responsible for completing and submitting a plugging and abandonment form (DNR-GW-2) to the department within 30 calendar days after completion of the plugging operation. The contractor shall also be responsible for informing the owner of the necessity of plugging and sealing any other water well or hole on the property that may have been previously abandoned or which may be abandoned in the future.

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 Department of Natural Resources, Office of Conservation, LR 37:912 (March 2011).

§523. Site Inspection by the Department Representatives

A. The department may order, at any time, that the site of an abandoned water well or hole be inspected by department representatives to determine whether the work has been satisfactorily completed in accordance with the standards stated herein and as stated on the Water Well Plugging and Abandonment Form (DNR-GW-2). The owner and/or the contractor shall make all records available to the representatives of the department and the owner shall allow representatives to enter the property and visit the site(s).

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 Department of Natural Resources, Office of Conservation, LR 37:912 (March 2011).

§525. Availability of Water Well Data

A. ...

Louisiana Department of Natural Resources
Office of Conservation
P.O. Box 94275
Baton Rouge, LA 70804-9275
Phone: (225) 342-8244

or

U.S. Geological Survey
Water Resources Division
Box 66492
Baton Rouge, LA 70896

B. ...
Louisiana Geological Survey
3097 Energy, Coastal and Environmental Bldg.
Louisiana State University
Baton Rouge, LA 70803

C. ...
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 Department of Natural Resources, Office of Conservation, LR 37:912 (March 2011).

§531. Methods and Standards for Plugging Abandoned Water Wells and Holes

A. - L. ...
NOTE: Plugging of abandoned monitoring wells associated with facilities regulated by the Department of Environmental Quality (DEQ) require approval from DEQ prior to actual plugging.

M. - R.2. ...
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 11:963 (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 37:913 (March 2011).

Chapter 7. Installing Control Devices on Free Flowing Water Wells

§701. Authorization

A. As announced in the October 1985 issue of the *Louisiana Register*, the rules and regulations, stated herein, were prepared by the Louisiana Department of Transportation and Development, Office of Public Works, in accordance with R.S. 38:3094(7)(A). 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.

B. The rules and regulations, stated herein, became effective on November 1, 1985 and supersede the rules and regulations which had been in effect since June 1, 1977.

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 Department of Natural Resources, Office of Conservation, LR 37:913 (March 2011).

James H. Welsh
Commissioner

1103#070

RULE

**Department of Public Safety and Corrections
Liquefied Petroleum Gas Commission**

**Storage and Handling of Liquefied Petroleum Gases
(LAC 55:IX.181)**

The Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, in accordance with R.S. 40:1846 and with the Administrative Procedure Act., R.S. 49:950 et seq., hereby amends Section 181, “National Fire Protection Association Pamphlet Numbers 54 and 58”.

This text has been amended to update the standards adopted by the L.P. Gas Commission with regard to storage and handling of liquefied petroleum gases.

Title 55

PUBLIC SAFETY

Part IX. Liquefied Petroleum Gas

Chapter 1. General Requirements

Subchapter I. Adoption of Standards

§181. National Fire Protection Association Pamphlet Numbers 54 and 58

A. The Liquefied Petroleum Gas Commission hereby adopts the *National Fuel Gas Code*, 2009 edition. The National Fire Protection Association designation is *NFPA 54-2009*. The Liquefied Petroleum Gas Commission also adopts the *Standard for the Storage and Handling of Liquefied Petroleum Gases*, 2008 edition. The National Fire Protection Association designation is *NFPA 58-2008*.

B. - E.13.e. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Liquefied Petroleum Gas Commission, LR 20:1404 (December 1974), amended LR 24:470 (March 1998), LR 25:1263 (July 1999), LR 25:2412 (December 1999), LR 27:2257 (December 2001), LR 31:2568 (October 2005), LR 37:913 (March 2011).

John Alario
Executive Director

1103#006

RULE

**Department of Public Safety and Corrections
State Uniform Construction Code Council**

State Uniform Construction Code (LAC 55:VI.Chapter 3)

In accordance with the provisions of R.S. 40:1730.26, relative to the authority of the Louisiana State Uniform Construction Code Council (LSUCCC) to promulgate and enforce rules, the Office of State Fire Marshal has amended the following Rule regarding the establishment of minimum standards for luminous path egress markings.

Title 55

PUBLIC SAFETY

Part VI. Uniform Construction Code

Chapter 3. Adoption of the Louisiana State Uniform Construction Code

§301. Louisiana State Uniform Construction Code

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

i. Repealed.

1.a.ii. - 7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.22(C) and (D) and 40:1730.26(1).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:291 (February 2007), amended LR 34:93 (January 2008), LR 34: 883 (May 2008), LR 34:2205 (October 2008), LR 35:1904 (September 2009), LR 36:2574 (November 2010), LR 37:913 (March 2011).

Jill Boudreaux
Undersecretary

1103#001

RULE

**Department of Revenue
Policy Services Division**

Electronic Filing Mandate for Reports and Returns related to the Sports Facility Assistance Fund (LAC 61:III.1527)

Under authority of R.S. 47: 1511 and 1520 and in accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, adopts LAC 61:III.1527 to mandate the electronic filing of any report or return related to the Sports Facility Assistance Fund.

Title 61

REVENUE AND TAXATION

**Part III. Administrative Provisions and Miscellaneous
Chapter 15. Mandatory Electronic Filing of Tax
Returns and Payments**

**§1527. Electronic Filing Mandate for Reports and
Returns related to the Sports Facility Assistance
Fund**

A. R.S. 47:1520(A)(1)(e) allows the secretary to require electronic filing of any return or report filed by a professional athletic team or a professional athlete which is required to be filed by the Department of Revenue for the administration of the Sports Facility Assistance Fund.

B. Effective for the 2011 tax year filings and all other tax years thereafter, all reports and returns filed by a professional athletic team or a professional athlete shall be filed electronically with the Department of Revenue using the electronic format provided by the department.

1. The returns and reports to be filed electronically include, but are not limited to, the following:

- a. L-1 with the team roster attached;
- b. L-3 reconciliation with attached, completed W-2s containing all federal information;
- c. IT 540B-NRA for nonresident athletes; and
- d. IT 540 for resident athletes.

2. The team rosters attached to the L-1 should include the following information:

- a. team or franchise name;
- b. team or franchise account number;
- c. type of game or sporting event;
- d. sporting game or event locations;
- e. practice date if applicable;
- f. sporting event or game date;
- g. the names of each player and staff member who traveled to the sporting game or event in Louisiana;

h. the social security numbers of each player and staff member;

i. the addresses of each player and staff member;

j. the job description of each player and staff member;

k. the quarterly salary of each player and staff member;

l. total duty days as defined in LAC 61:I.1304.I.2;

m. Louisiana duty days which includes days of all practices, meetings and games;

n. the Louisiana wages of each athlete and staff member;

o. the Louisiana withholding tax of each athlete and staff member; and

p. the total roster Louisiana withholding tax.

C. Failure to comply with this electronic filing requirement will result in the assessment of a penalty of \$1,000 per failure.

D. If it is determined that the failure to comply is attributable, not to the negligence of the taxpayer, but to other causes set forth in written form and considered reasonable by the secretary, the secretary may remit or waive payment of the whole or any part of the penalty.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1520 and 1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 37:914 (March 2011).

Cynthia Bridges
Secretary

1103#056

RULE

**Department of Revenue
Policy Services Division**

New Markets Tax Credit (LAC 61:I.1911)

Under the authority of R.S. 47:6016, R.S. 47:287.785, and R.S. 47:1511 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, adopts LAC 61:I.1911.

Title 61

REVENUE AND TAXATION

**Part I. Taxes Collected and Administered by the
Secretary of Revenue
Chapter 19. Miscellaneous Tax Exemptions, Credits
and Deductions**

§1911. Louisiana New Markets Tax Credit

A. Application Process for New Markets Tax Credits

1. A taxpayer may apply for Louisiana new markets tax credits by submitting a new markets tax credit application to the Special Programs Division of the Louisiana Department of Revenue. The form R-10609 is available online on the department's website. Applications for new markets tax credits will be processed in the order received.

2. If a taxpayer is entitled to the credit, a new market tax credit summary sheet will be issued to the taxpayer. The summary sheet will contain a tracking number.

3. The new market tax credit summary sheet will also contain a transfer section that must be updated each time the taxpayer transfers their credit. The taxpayer must send an updated new market tax credit summary sheet to notify the department of revenue of the sale within 30 days of the sale.

4. The taxpayer must attach the new market tax credit summary sheet to their income or franchise tax return to claim the credit.

B. Applying the New Markets Tax Credit

1. New markets tax credits earned by a taxpayer or received by a taxpayer by flow-through from a partnership or LLC may be applied as detailed in Revenue Ruling 08-011-A and as explained below.

a. Credits may be applied to the tax year in which the credit allowance date occurred.

b. Credits may not be applied to penalties and interest.

c. Prior year returns that include the credit allowance date may be amended to apply credits earned that year.

d. Credits may be applied against taxes paid in a prior year and the taxes paid may be refunded. However, the new markets tax credit is nonrefundable and credits in excess of the tax paid in a prior year can only be carried forward in accordance with R.S. 47:6016(D).

e. Credits from qualified equity investments made on or after April 1, 2008, cannot be claimed on any return or prior year return that was due before December 31, 2008.

d. Credits from qualified equity investments made on or after December 1, 2009 cannot be claimed on any return or prior year return that was due before December 31, 2010.

2. New markets tax credits transferred by sale to a taxpayer may be applied as detailed in Revenue Ruling 08-011-A and as explained below.

a. Credits may be applied to a prior year's outstanding tax liability, including penalties and interest, as provided by R.S. 47:1675(H)(1)(c).

b. A taxpayer that purchases the credits may not amend their prior year returns to claim credits where no liability is currently outstanding and therefore trigger a refund.

c. Credits purchased from qualified equity investments made on or after April 1, 2008, cannot be claimed on any return or prior year return that was due before December 31, 2008.

d. Credits purchased from qualified equity investment made on or after December 1, 2009, cannot be claimed on any return or prior year return that was due before December 31, 2010.

C. Limitations on the New Markets Tax Credit

1. New markets tax credits earned from qualified equity investments issued prior to July 1, 2007, are subject to an annual \$5,000,000 cap applicable to all new markets tax credits issued for that year by the department. Once the cap is reached, no other credits will be granted for that year.

2. New markets tax credits from qualified equity investments issued after July 1, 2007, but before April 1, 2008, are subject to a \$50,000,000 cap on the entire new markets credit program.

3. New markets tax credits from qualified equity investments issued after April 1, 2008, shall be allowed as follows:

a. during the period beginning April 1, 2008, and ending December 31, 2008, \$25,000,000;

b. during the period beginning January 1, 2009, and ending November 30, 2009, \$12,500,000 plus any unissued credits from the prior period;

c. during the period beginning December 1, 2009 and ending December 31, 2010, \$12,500,000 plus any unissued credits from the prior periods; and

d. during periods beginning January 1, 2011 and after, credits shall be limited to only unused credits from prior years.

D. Additional Requirements and Limitations for Credits

1. To be issued credits on qualified low-income investments that exceed seven million five hundred thousand dollars, the Department of Economic Development must certify that the qualified low-income investment was made to a business in a targeted industry. Request for new markets tax credits from qualified low-income investments exceeding seven million five hundred thousand dollars will be accepted by the department without certification from the Department of Economic Development if the taxpayer asserts in their application that certification has been requested. However, the new markets tax credit certification will not be issued to the taxpayer until the department receives the certification from the Department of Economic Development or the certification is not denied by the Department of Economic Development with 60 days of the request, whichever occurs first.

E. New Markets Tax Credits Transfer Process

1. Any new markets tax credits not previously claimed by a taxpayer against their income or franchise tax may be transferred or sold.

2. The original investor that is transferring credits must send an updated new market tax credit summary sheet within 30 days of the sale. The original investor should also include a new markets transfer form R-10613 with closing documents to the transferee. The new markets transfer form is available from the department's website.

3. The transferee must submit the new markets transfer form with their income or franchise tax return to claim the credits.

4. Any transferor, other than the original investor, should use a new markets transfer form to transfer credits to another Louisiana taxpayer and send a copy of the form to the department within 30 days of the sale.

AUTHORITY NOTE: Promulgated in accordance with R.S.47:6016, R.S.47:287.785, and R.S.47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, LR 37:914 (March 2011).

Cynthia Bridges
Secretary

1103#055

RULE

Department of Transportation and Development

Outdoor Advertising (LAC 70:III.Chapter 1)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Transportation and Development has amended Part III of Title 70, entitled "Outdoor Advertising", in accordance with R.S. 48:461, et seq.

Title 70

TRANSPORTATION

Part III. Outdoor Advertising

Chapter 1. Outdoor Advertising

Subchapter C. Regulations for Control of Outdoor Advertising

§127. Definitions

Centerline of Highway—a line of equal distance from the edges of the median separating the main-traveled ways of a divided Interstate Highway, or the centerline of the main-traveled way of a non-divided interstate highway or the centerline of each of the main-traveled ways of a divided highway separated by more than the normal median width or constructed on independent alignment.

Controlled Areas—within urban areas, the applicable control area distance is 660 feet measured horizontally from the edges of the right-of-way along a line perpendicular to the centerline of the Interstate and/or Federal Aid Primary Systems or National Highway System. Outside urban areas, the control area extends beyond 660 feet to include any sign within visibility of the Interstate and/or Federal Aid Primary System or National Highway System.

* * *

Destroyed Sign—that 50 percent or more of the upright supports of a sign structure are physically damaged so that normal repair practices would require:

1. In the case of wooden sign structures, replacement of the broken supports, or,
2. In case of metal sign structures, replacement of a least thirty percent of the length above ground of each broken, bent or twisted support.

* * *

Maintenance—to allow to exist. The dimensions of the existing sign are not to be altered nor shall any additions be made to it except for a change in message content. When the damage to the upright supports of a sign is 50 percent or more (see definition of destroyed sign), it shall be considered new construction and shall be subject to all requirements pertaining to new construction.

* * *

Zoned Commercial or Industrial Areas—those areas which are zoned for business, industry, commerce or trade pursuant to a state or local zoning ordinance or regulation. A zone in which limited commercial or industrial activities are permitted as an incidental to other primary land uses is not considered to be a commercial or industrial zone for outdoor advertising purposes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering,

LR 28:872 (April 2002), amended LR 31:944 (April 2005), LR 33:530 (March 2007), LR 37:916 (March 2011).

§132. Off-Premise Changeable Message Signs

A. *Changeable Message Sign*—any outdoor advertising sign which displays a series of advertisements, regardless of technology used, including, but not limited to, the following:

1. rotating slats;
2. changing placards;
3. rotating cubes;
4. changes in light configuration or light colors;
5. LED (light emitting diodes)/video displays.

B. Qualifying Criteria

1. - 3. ...
4. The use of such technology is limited to conforming signs only. Application of such technology to nonconforming signs is prohibited.

5. - 7. ...

8. On stacked sign structures, changeable message signs shall be allowed one per side.

9. Changeable message signs shall not exceed 672 square feet.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of the General Counsel, LR 25:2463 (December 1999), amended LR 37:916 (March 2011).

§134. Spacing of Signs

A. ...

B. Interstate Highways and Freeways on the Federal-Aid Primary System and National Highway System (Control of Access Routes).

1. No two structures shall be spaced less than 1000 feet apart.

2. ...

C. Freeways on the Federal-Aid Primary System or National Highway System (Control of Access Routes)

1. Outside of incorporated villages, towns and cities, No two structures shall be spaced less than 500 feet apart.

2. Outside of incorporated villages, towns and cities, no structure may be located adjacent to or within 500 feet of an interchange, intersection, intersection at grade or safety rest area.

D. Non-Freeway Federal-Aid Primary highways or National Highway System

1. Outside of incorporated villages, towns and cities, no two structures shall be spaced less than 300 feet apart.

2. Within incorporated villages, towns and cities, no two structures shall be less than 100 feet apart.

E. The above provisions applying to the spacing between structures do not apply to structures separated by buildings or other obstructions in such a manner that only one sign facing located within the above spacing distance is visible from the highway at any one time. This exception does not apply to vegetation.

F. Official and "on-premise" signs, as defined in §139, and structures that are not lawfully maintained shall not be counted nor shall measurements be made from them for purposes of determining compliance with spacing requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering, LR 28:872 (April 2002), amended LR 33:530 (March 2007), LR 37:916 (March 2011).

§135. Measurements for Spacing

A. - C. ...

D. For continuous ramps which start at one entrance and end at the next exit, the allowable spacing shall be measured from the intersection of the edge of the mainline shoulder and the edge of the ramp shoulder; or in the case of bridges, the measurement would be taken where the mainline and the ramp bridge rails meet. This provision shall apply to §134.B.1 and 2 and §134.C.1 and 2.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 2:188 (June 1976); amended by the Department of Transportation and Development, Office of Highways/Engineering, LR 31:945 (April 2005), LR 33:350 (March 2007), amended LR 37:917 (March 2011).

§136. Erection and Maintenance of Outdoor Advertising in Unzoned Commercial and Industrial Areas.

A. Definitions

Unzoned—Repealed.

Unzoned Commercial or Industrial Areas—those areas which are not zoned by state or local law, regulation, ordinance and on which there are located one or more permanent structures within which a commercial or industrial business is actively conducted, and where the area along the highway extends outward 800 feet from and beyond the edge of the activity.

B. Qualifying Criteria

1. Primary Use Test

a. - b. ...

c. The fact that an activity may be conducted for profit in the area is not determinative of whether or not an area is an *unzoned or commercial area*. Activities incidental to the primary use of the area, such as a kennel or a repair shop in a building or on land which is used primarily as a residence, school, church or assisted/extended living facilities do not constitute commercial or industrial activities for the purpose of determining the primary use of an *unzoned* area even though income is derived from the activity.

d. ...

e. The actual land use at the sign site cannot be agricultural or farming.

2. - 2.c....

3. Structures and Grounds Requirements

a. - f. ...

g. Limits. Limits of business activity shall be in accordance with the definition of *Unzoned* commercial or industrial areas as stated in §136.B.2.

h. Activity requirements. In order to be considered a commercial or industrial activity for the purpose of outdoor advertising regulation, the following conditions shall be taken into consideration by the department. The department shall make a determination based upon a totality of the circumstances.

i. The purported activity enterprise is open for business and actively operated and staffed with personnel on the premises a minimum of eight hours each day and a

minimum of five days each week. However, some businesses may not require staffing, such as a laundry mat, car wash, etc. The department has the discretion to determine whether the business requires staff to operate the business.

ii. ...

iii. A sufficient inventory or products is maintained for immediate sale or delivery to the consumer. If the product is a service, it ~~is~~ must be available for purchase on the premises.

iv. ...

C. Where a mobile home, manufactured building, or a recreational vehicle is used as a business or office, the following conditions and requirements also apply.

1. - 4. ...

D. Non-Qualifying Activities

1. - 4. ...

5. activities conducted in a building principally used as a residence, school, church or assisted/extending living facility.

6. - 10. ...

11. recreational facilities.

12. Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 25:880 (May 1999), amended by the Department of Transportation and Development, Office of Highways/Engineering, LR 31:945 (April 2005), repromulgated LR 32:117 (January 2006), amended LR 37:917 (March 2011).

§137. Nonconforming Signs

A. In addition to all other laws, regulations and rules, the following conditions and requirements apply to continue and maintain a nonconforming sign.

1. ...

2. Reasonable repair and maintenance of the sign includes a change of advertising message, repainting of the structure, sign face, or trim, and replacing electrical components after failure. Reasonable maintenance also includes replacement of stringers, platforms and worker supports. The type of sign face may not be changed, except that a wood or steel face may be wrapped with a vinyl wrap containing the message or the face may be replaced with a panel free frame for hurricane protection. Lighting cannot be added to the sign structure or placed on the ground with the intention of illuminating a previously unilluminated nonconforming sign. Replacement of 50 percent or more of the upright supports is prohibited. (See definitions of "Destroyed Sign" in §127).

3. A substantial change in the subject sign which will terminate the status of legal but nonconforming usage occurs when:

a. there has been an addition of 25 percent or more of the square footage of the sign (excluding trim);

b. there has been a any change in the material composition of the sign super-structure or sign facing. The cost of which exceeds the cost of replacement or repair of the original materials. other than reasonable maintenance as defined in Section 137.2 (wooden poles must be replaced by wooden poles. I-beams, pipe or other metal poles must be replaced or repaired with the same materials.)

4. When and if nonconforming use rights in and to a sign structure are acquired by the Louisiana Department of

Transportation and Development through the exercise of eminent domain, just compensation will be based upon the original size and material of the sign when it became a nonconforming structure and not upon any enlarged size, improvement or betterment to the sign.

5. When any sign which loses its nonconforming use status by reason of any substantial change, including those changes prohibited above, the subject sign will be considered a new advertising device and subject to all current regulations and prohibitions as of the time of the change.

6. Destruction. Nonconforming signs are considered destroyed when 50 percent or more of the upright supports of a sign structure are physically damaged such that normal repair practices would call for:

a. in the case of wooden sign structures, replacement of the broken supports; or

b. in case of metal sign structures, replacement of at least thirty percent of the length above ground of each broken, bent or twisted support; or

c. any signs so damaged by intentional, criminal conduct may be re-erected within 180 days from the date of destruction to retain nonconforming status; however such re-erection must occur at the identical location and the size, lighting and spacing must be identical to the prior circumstances;

d. nonconforming signs cannot be modified or repaired unless the requirements of this Section are met. Prior to repair or modification, authorized district personnel must review the damages and approve the repairs. If the sign is repaired prior to approval by the department's authorized personnel, the sign shall become illegal and the permit shall be revoked. The request and documentation of what is to be repaired must be made to the outdoor advertising program manager by certified mail. The department shall respond to the request within 14 business days of receipt of the certified letter. The department's failure to respond within 14 business days of receiving the repair request will allow the owner to repair the sign without the department's approval.

8. Abandonment

a. ...

b. The said 12 month period may be interrupted for the period of time during which the controlled highway relative to such sign is closed for repairs adjacent to said sign or the sign owner is able to demonstrate that the sign has been the subject of an administrative or legal proceeding preventing the owner from displaying copy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways, LR 2:188 (June 1976), amended by the Department of Transportation and Development, Office of Highways/Engineering, LR 29:2855 (December 2003), amended LR 37:917 (March 2011).

§139. Determination of On-Premise Exemptions

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

2. Activity Requirements

a. The purported activity enterprise is open for business and actively operated and staffed with personnel on the premises a minimum of eight hours each day and a minimum of five days a week. However, some businesses may not require staffing, such as a laundry mat, carwash, etc.

The department has the discretion to determine if staffing is required in order to operate the business.

b. ...

c. A sufficient inventory of products is maintained for immediate sale or delivery to the consumer. If the product is a service, it must be available for purchase on the premises.

B.3. - C.1.b.ii. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 2:189 (June 1976), amended by the Department of Transportation and Development, Office of Highways/Engineering, LR 31:945 (April 2005), repromulgated LR 32:117 (January 2006), amended LR 33:531 (March 2007), LR 37:918 (March 2011).

§143. Procedure and Policy for Issuing Permits for Controlled Outdoor Advertising

A. - D. ...

E. The department must be notified in writing by the original permittee upon any change or transfer of ownership of the permitted installation. Such notification may be done by submittal of the sales agreement.

F. An original signature of the landowner or a copy of the current lease agreement shall be submitted with each application.

G. Every applicant who seeks to situate a controlled advertising structure in a commercial or an industrial zone shall furnish evidence of the restrictive zoning of the subject land on the department's zoning supplement form which shall be completed by the appropriate state or local authority.

H. Permit applications which are properly completed and executed and which are accompanied by all other required documentation shall be thereafter submitted by the district office to the appropriate permit office in Baton Rouge, Louisiana, for review. Permits applications which are not in proper form or which are not complete or not accompanied by required documentation or do not meet the requirements of state law at the time of the submittal of the application shall be returned to the applicant by the district office with reasons for its return. Applications may be resubmitted at any time.

I. The appropriate permit-issuing officer designated by the department shall review all permit applications. Thereafter, permits shall be issued or the application rejected and returned to the applicant with reasons for denial of the permit.

J. ...

K. Each permit shall specify a time delay of 12 months within which to erect the subject advertising device. The district office shall determine whether or not the device has been erected within the specified time delay.

L. If a sign has not been erected within the delay provided by the subject permit, the permit may be voided by the department and the applicant or permittee so notified. On the day following the posting of notice to any such applicant or permittee of the voiding of the permit to the last known address as furnished by the applicant, the subject sign location shall be available to any other applicant.

M. - O. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways, LR 2:191 (June 1976), amended by the Department of Transportation and Development, Office of Highways/Engineering, LR 29:2856 (December 2003), LR 31:945 (April 2005), LR 33:532 (March 2007), LR 37:918 (March 2011).

§144. Penalties for Illegal Outdoor Advertising Signs

A. An outdoor advertising sign is deemed to be illegal for the purpose of issuing penalties if:

1. the owner has received a certified letter from the department under the provisions of R.S. 48:461.7 and has failed to respond within the time allotted; or

2. the owner has received a certified letter from the department provided for in R.S. 48:461.7; received a permit review as provided for hereafter, with a ruling of illegality by the permit review committee; and failed to appeal to a court of competent jurisdiction;

3. the owner replied to the certified letter provided for in R.S. 48:461.7; received a permit review as provided for hereafter; received a ruling of illegality by the permit review committee; appealed said ruling to a court of competent jurisdiction and a final ruling of illegality was rendered by the court.

B. - D.1.c. ...

d. Traffic Engineering or their designated representative.

2 - 5. ...

6. Permittee's failure to submit an appeal in a timely manner shall constitute a waiver of the permit review process.

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways, LR 24:960 (May 1998), amended by the Department of Transportation and Development, Office of Highways/Engineering, LR 29:2856 (December 2003), LR 37:919 (March 2011).

§145. Directional Signs

A. *Directional signs* are those containing directional information about public places owned or operated by federal, state or local governments or their agencies; publicly or privately owned natural phenomena, historic, cultural, scientific, educational and religious sites; and areas of natural scenic beauty or areas naturally suited for outdoor recreation.

B. Standards for Directional Signs

1. The following criteria apply only to directional signs.

a. General. The following signs are prohibited:

i. signs advertising activities which are illegal under federal or state laws or regulations in effect at the location of those signs or at the location of those advertised activities;

ii. signs located in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal or device, or obstruct or interfere with the driver's view of approaching, merging or intersecting traffic;

iii. signs which are erected or maintained upon trees or painted or drawn upon rocks or other natural features;

iv. obsolete signs;

v. signs which are structurally unsafe or in disrepair;

vi. signs which move or have any animated or moving parts;

vii. signs located in rest areas, on park land or in scenic areas.

b. Size. No sign shall exceed the following limits:

i. maximum area—150 square feet;

ii. maximum height—20 feet;

iii. maximum length—20 feet;

iv. All dimensions include border and trim, but exclude supports.

c. Lighting. Signs may be illuminated, subject to the following provisions:

i. signs which contain, include or are illuminated by any flashing, intermittent or moving light or lights are prohibited;

ii. signs which are not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way of an Interstate or primary highway or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with any driver's operation of a motor vehicle are prohibited;

iii. no sign may be so illuminated as to interfere with the effectiveness of or obscure an official traffic sign, device, or signal.

d. Spacing

i. Each location of a directional sign must be approved by the department.

ii. No directional sign may be located within 2000 feet of an interchange or intersection at grade along the Interstate system or other freeways (measured along the Interstate or freeway from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main traveled way.)

iii. No directional sign may be located within 2000 feet of a safety rest area, parkland or scenic area.

iv. No two directional signs facing the same direction of travel shall be spaced less than one mile apart.

v. Not more than three directional signs pertaining to the same activity and facing in the same direction of travel may be erected along a single route approaching the activity.

vi. Signs located adjacent to the Interstate system shall be within 75 air miles of the activity.

vii. Signs located adjacent to the primary system shall be within 50 air miles of the activity.

e. Message Content

i. The message on the directional signs shall be limited to the identification of the attraction or activity and directional information useful to the traveler in locating the attraction, such as mileage, route numbers or exit numbers.

ii. Descriptive words or phrases and pictorial or photographic representations of the activity or its environs are prohibited.

f. Selection Method and Criteria

i. Privately owned activities or attractions eligible for directional signing are limited to the following:

(a). natural phenomena;

(b). scenic attractions;

(c). historic, educational, cultural, scientific and religious sites; and

(d). outdoor recreational area.

ii. Privately owned attractions or activities must be nationally or regionally known and of outstanding interest to the traveling public, as determined by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Outdoor Advertising, LR 37:919 (March 2011).

Subchapter D. Outdoor Advertising Fee Schedule

§148. Issuance of Outdoor Advertising Permits for Grandfathered Nonconforming Signs

A. Applications shall be made by the person who is the owner of the sign which is the subject of the permit.

B. Applicants for a permit shall execute an application form furnished by the department and shall forward the properly and completely executed application form to the appropriate district office of the department. The "appropriate district office" shall be the district office where the sign to be permitted is located.

C. The appropriate permit issuing officer designated by the department shall review all permit applications. Thereafter, permits shall be issued and a copy of the permit shall be sent to the applicant.

D. Copies of all permits shall be transmitted to the district where the sign is located for subsequent surveillance by the district office.

E. The department must be notified in writing by the original permittee upon any change or transfer of ownership of the permit. Such notification shall be by submittal of the sales agreement.

F. An original signature of the landowner or a copy of the current lease agreement shall be submitted with each permit.

G. The request and documentation of what is to be repaired must be made to the outdoor advertising program manager by certified mail. The department shall respond to the request within 14 business days of receipt of the certified letter. The department's failure to respond within 14 business days of receiving the repair request will allow the owner to repair the sign without the department's approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461, et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 37:920 (March 2011).

§149. Permit Fee

A. The following permit fee schedule is applicable to new and replacement outdoor advertising signs beginning on the effective date of this rule change:

a. one to 100 square feet—\$75 (per sign face) for a 12 month period until installation. Annual renewal fee after erection is \$7.50 (per sign face);

b. 101 to 300 square feet—\$125 (per sign face) for a 12 month period until installation. Annual renewal fee after erection is 12.50 (per sign face);

c. 301 square feet and up—\$250 (per sign face) for a 12 month period until installation. Annual renewal fee after erection is \$25 (per sign face).

B. Annual Renewal Due Dates and Extensions

1. Annual renewal fees are due by July 1 of each year. The department shall provide notice of the amount due for each permit no later than April 30 of each year.

2. A permit shall expire and the sign structure will become illegal if the annual renewal fees are not paid by

July 31 of each year. This applies to all permits, including but not limited to legal, nonconforming and grandfathered signs.

3. Extensions may be granted for 30 days provided that a request is made prior to July 1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:274.1, et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways, LR 12:602 (September 1986), amended by the Department of Transportation and Development, Office of Highways/Engineering, LR 29:2857 (December 2003), LR 37:920 (March 2011).

Sherri H. Lebas, PE.
Secretary

1101#068

RULE

Department of Transportation and Development

Tourist Oriented Directional Signs
(LAC 70:III.502, 503, 505 and 506)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Transportation and Development hereby amends Chapter 5 of Part III of Title 709 entitled "Installation of Tourist Oriented Directional Signs (TODS)", in accordance with R.S. 48:461, et seq.

Title 70

TRANSPORTATION

Part III. Outdoor Advertising

Chapter 5. Installation of Tourist Oriented Directional Signs (TODS)

§502. Definitions

A. Except as defined in this paragraph, the terms used in this rule shall be defined in accordance with the definitions and usage of the Louisiana Manual on Uniform Traffic Control Devices (MUTCD).

Tourist Activities—publicly or privately owned or operated; natural phenomena, historic, cultural, scientific, educational, or religious sites, and areas of national beauty or areas naturally suited for outdoor recreation, the major portion of whose income or visitors are derived during the normal business season from motorists not residing in the immediate area of the activity.

AUTHORITY NOTE: Promulgated in accordance with R. S. 48:461.2

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 12:1596 (December, 1993), amended LR 22:229(March, 1996), amended LR 37:920 (March 2011).

§503. General Eligibility Requirements

A. ...

B. Types of attractions may include, but will not be limited to the following:

1. national historical sites, parks, cemeteries, monuments;

2. state historical sites, parks, monuments; cultural attractions;

3. aquariums, museums, zoos, planetariums, and arboretums;
4. lakes and dams, recreational areas, beaches;
5. Indian sites, historical homes/buildings, gift/souvenir shops;
6. bed and breakfast establishments; and
7. hotels, motels and restaurants only if they are listed on the National Register of Historic Places.

C. - K. ...

L. Sign design. TOD signs will be designated as follows:

1. Each sign should have one or two lines of legend. All signs shall have a directional arrow with mileage. The content of the legend shall be limited to the name of the attraction and the directional information. If space exists on the second line, additional directional information may be indicated, e.g., one-fourth, mile on left, left on Second Street, etc. The maximum number of letters and spaces on a given line will be 18. Legends shall not include promotional advertising.

AUTHORITY NOTE: Promulgated in accordance with R. S. 48:461.2

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 12:1596 (December, 1993), amended LR 22:229 (March, 1996), amended LR 37:920 (March 2011).

§505. Application Procedure

A. Applications for TODS shall be submitted to the LA DOTD Office of the Traffic Services Administrator.

B. Personnel assigned to the Office of DOTD traffic services administrator or their agent will review the application and a field check will be made by the district traffic operations engineer or its agent to verify information provided and to collect additional data on existing conditions, including whether a location for a TODS exists at the requested intersection and what trailblazing will be necessary.

C. Applications shall then be submitted to the DOTD TODS manager or its agent for further review.

D. The DOTD traffic services administrator or its agent shall then forward the application with information to the Assistant Secretary of the Louisiana Office of Tourism.

E. The DOTD outdoor advertising program manager section 45 or its agent will determine if the applicant qualifies as a tourist activity and make a report of its finding to the assistant secretary of the Louisiana Office of Tourism.

F. TODS applications will be accepted on a "first-come" basis.

G. All TODS signs shall be furnished by the businesses at no cost to DOTD or its agent and shall be manufactured in accordance with DOTD Standards or Special Specifications and/or supplements thereto, for both materials and construction. Signs not meeting these requirements shall not be installed.

H. Applicants must submit a layout of professional quality or other satisfactory evidence indicating design of the proposed TODS sign for approval by DOTD or its agent before the sign is fabricated.

I. Applicant must supply all signs within 90 days of approval. Failure to do so may cause DOTD or its agent to void the application.

J. Applicant will be limited to two mainline signs and a minimal number of trailblazer signs, the number deemed necessary to be determined by the department or its agent.

AUTHORITY NOTE: Promulgated in accordance with L.R.S. 48:461.2.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 12:1596 (December, 1993), amended LR 22:229 March 1996), amended LR 37:921 (March 2011).

§506. Fees and Agreements

A. The fees and renewal dates shall be established by the department. Notification will be given 30 days prior to changes in fees.

1. The permittee will be invoiced for renewal 30 days prior to the renewal date. The fee shall be remitted by check or money order payable to the Louisiana Department of Transportation and Development or its agent. Failure of a business to submit the renewal fee(s) by the annual renewal date shall be cause for removal and disposal of the TOD signs by the department or its agent. The initial fee shall be prorated by the department to the annual renewal date to cover the period beginning with the month following the installation of the TOD signs. Service fees will be charged for the removal and reinstallation of delinquent applicants.

2. When requested by the applicant, the department or its agent, at its convenience, may perform additional requested services in connection with changes of the TOD sign, with a service charge per sign. A service fee will be charged for removal and reinstallation of seasonal signs.

3. The department or its agent shall not be responsible for damages to TOD signs caused by acts of vandalism, accidents, natural causes (including natural deterioration), etc. requiring repair or replacement. In such events the business shall provide a new or renovated business sign together with payment of a service charge fee per sign to the department or its agent to replace such damaged business sign(s).

4. Tourist attractions requesting placement of TOD signs shall submit to the department or its agent a completed application form provided by the department or its agent. A business which would not typically qualify for a sign may be permitted if the business is a building listed on the National Register of Historic Places. However, the name to be placed on the sign shall be determined by the DOTD TODS manager, section 45 or its agent.

5. No TOD sign shall be displayed which, in the opinion of the department, does not conform to department standards, is unsightly, badly faded, or in a substantial state of dilapidation. The department or its agent shall remove or replace any such TOD signs as appropriate. Removal shall be performed upon failure to pay any fee or for violation of any provision of these rules.

6. When a TOD sign is removed, it will be taken to the district office of the district in which the activity is located or to the permitted business. The applicant will be notified of such removal and given 30 days in which to claim the sign or signs, after which time, the sign or signs shall be disposed of by the department or its agent.

7. Should the department or its agent determine that trailblazing to a tourist attraction is warranted, it shall be done with an assembly (or series of assemblies) consisting of trailblazing signs. The attraction will be responsible for having the signs installed on all local roads by the parish or municipality in which the signs are to be located.

8. ...

9. When it comes to the attention of the department or its agent that a participating activity is not in compliance with the minimum criteria, or does not meet the general eligibility requirements, the applicant will be notified that it has a maximum of 30 days to correct any deficiencies or its signs will be removed. If the applicant applies for reinstatement, this request will be handled in the same manner as a request from a new applicant.

10. ...

AUTHORITY NOTE: Promulgated in accordance with L.R.S. 48:461.2.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 12:1596 (December, 1993), amended LR 22:230 (March 1996), amended LR 37:921 (March 2011).

Sherri H. Lebas, P.E.
Secretary

1103#069

RULE

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Assignment of HINs to Undocumented Vessels Manufactured in Louisiana (LAC 76:XI.309)

The Wildlife and Fisheries Commission does hereby enact rules governing the assignment of hull identification numbers to undocumented vessels manufactured in Louisiana that do not qualify for hull identification number assignment by the United States Coast Guard.

Title 76

WILDLIFE AND FISHERIES

Part XI. Boating

Chapter 3. Boating Safety

§309. Assignment of Hull Identification Numbers to Undocumented Vessels Manufactured in Louisiana

A. The following regulations shall provide for the assignment of hull identification numbers (HIN) to undocumented vessels manufactured in this state that do not qualify for the assignment of such numbers by the United States Coast Guard.

B. The manufacturer(s) of such vessels shall submit an Application for Eligibility requesting approval from the department. The manufacturer must be capable of producing a minimum of 10 vessels annually and must provide proof of security in one of the following forms to be eligible to receive the HIN's:

1. pre-payment of a minimum of one block of 10 HIN numbers, or

2. bond, letter of credit, or other security, in an amount and form acceptable to the secretary, determined on a case by case basis.

C. Upon receipt of an application for eligibility from a manufacturer, an agent from the enforcement division shall conduct an initial inspection of the manufacturer's vessel fabrication location.

D. Upon favorable inspection, the manufacturer(s) shall be approved to receive HIN's issued in blocks of 10 individual HINs upon the manufacturer's request. The department shall charge a fee of \$25 per issued HIN.

E. Manufacturer(s) receiving department-issued HIN, as described in this Section, shall comply with the following procedures.

1. The HIN must be stamped on the vessel before it leaves the manufacturer's facility.

2. The manufacturer(s) must produce a manufacturer statement of origin (MSO) as described in R.S. 34:852.11. The manufacturer shall provide the purchaser and/or transferee with the original MSO.

3. Manufacturer(s) must maintain records of all vessels stamped with HIN from the block of numbers issued to the manufacturer by the department. These records must include the date the vessel was stamped, vessel make, principle vessel hull material, vessel length, vessel type, HIN stamped on vessel, date vessel was sold or ownership transferred, and name and address of the transferee. These records shall be kept in the form of a log book issued by the department. The log book shall be returned to the department upon completion. Manufacturers must maintain a copy of the log book for three years.

F. Agents from the enforcement division may inspect the manufacturer(s)' facility, records, and/or vessels to verify that the manufacturer is maintaining compliance with the stated procedures.

G. Violation of this Section shall be fined not less than \$500; but no more than \$1000, or imprisoned for not more than 30 days, or both, for each violation as provided in R.S. 34:852.22.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:852.13.B.

HISTORICAL NOTE: Promulgated by Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 37:922 (March 2011).

Robert J. Barham
Secretary

1103#007

Notices of Intent

NOTICE OF INTENT

Department of Agriculture and Forestry Office of Agriculture and Environmental Sciences Boll Weevil Eradication Commission

Cotton Acreage Reporting and Collection of Assessments
(LAC 7:XV.303, 319, and 321)

In accordance with the Administrative Procedures Act, R.S. 49:950 et seq., and with the enabling statute, R.S. 3:1604.1, the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Boll Weevil Eradication Commission (commission) intends to amend these rules and regulations (“the proposed action”) to direct cotton producers to report their cotton acreage and to pay their assessments directly to the Department of Agriculture and Forestry rather than the Farm Service Agency (FSA) of the U.S. Department of Agriculture. The proposed action is required because the FSA has decided that it will no longer be directly involved in the reporting of cotton acreage to the department or the collection of the assessment.

Title 7

AGRICULTURE AND ANIMALS

Part XV. Plant Protection and Quarantine

Chapter 3. Boll Weevil

§303. Definitions Applicable to Boll Weevil

A. The words and terms defined in R.S. 3:1603 are applicable to this Chapter.

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

APHIS—the Animal and Plant Health Inspection Service of the United States Department of Agriculture.

ASCS—the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture, now known as FSA (Farm Service Agency).

Compliance Agreement—a written agreement between the department and any person engaged in growing, dealing in or moving regulated articles wherein the latter agrees to comply with specified provisions to prevent dissemination of the boll weevil.

Cotton Acre—any acre of land devoted to the growing of cotton, regardless of row width or planting pattern.

FSA— the Farm Service Agency of the United States Department of Agriculture, (formerly ASCS).

Gin Trash—all material produced during the cleaning and ginning of seed cotton, bollies or snapped cotton, except lint, cottonseed or gin waste.

Penalty Fee—the fee assessed against a cotton producer for late reporting of acreage, underreporting of acreage or late payment of assessments. It does not refer to the assessment fee itself nor to any penalty assessed for any violation of the regulations.

Premises—any parcel of land, including any buildings located thereon, irrigation systems and any other similar locations where the boll weevil is, may be, or where conditions are conducive to supporting the boll weevil.

Seed Cotton—cotton as it comes from the field prior to ginning.

Used Cotton Equipment—any equipment used previously to harvest, strip, transport or process cotton.

Waiver—a written authorization which exempts a person from compliance with one or more requirements of these regulations and the Boll Weevil Eradication Law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1604.1.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Boll Weevil Eradication Commission, LR 21:17 (January 1995), amended LR 23:195 (February 1997), LR 37:

§319. Reporting of Cotton Acreage

A. All cotton producers growing cotton in the state of Louisiana shall certify their planted cotton acreage by the later of July 1 or at final certification of the current growing season at the FSA office responsible for the parish or parishes in which they produce cotton. The certification shall be filed for each year of the program and shall include the actual acreage and location of cotton planted during the current growing season.

B. All cotton producers growing cotton in the state of Louisiana shall, for each year of the program, also complete and sign a Cotton Acreage Reporting and Payment Form provided by the commissioner and return the signed and completed form to the department along with FSA form 578 at the time the assessment is paid to the department.

C. Noncommercial cotton shall not be planted in the Louisiana Eradication Zone unless an application for a written waiver has been submitted in writing to the commissioner stating the conditions under which such written waiver is requested, and unless such written waiver is granted by the commissioner. The commissioner's decision to grant or deny a written waiver for noncommercial cotton shall include consideration of the location, size, pest conditions, accessibility of the growing area, any stipulations set forth in any compliance agreement between the applicant and the commissioner, and any other factors deemed relevant to effectuate the boll weevil eradication program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1604.1, 1607, 1609.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Boll Weevil Eradication Commission, LR 21:20 (January 1995), amended LR 23:195 (February 1997), LR 37:

§321. Assessments, Payment and Penalties

A. The September 2003 referendum set the maximum annual assessment at \$6 per acre of cotton planted in the state. The annual assessment on cotton producers in the Louisiana Eradication Zone shall be \$6 per acre for each acre of cotton planted in the state. Each cotton producer shall pay his annual assessment directly to the department no later than July 1 or final certification by the FSA of the growing season, whichever is later. The signed and completed Cotton Acreage Reporting and Payment Form with FSA form 578

attached shall be submitted with the annual payment of the assessment.

B. - C. ...

D. Any cotton producer failing to certify his planted cotton acreage by the later of July 1 or final certification of the current growing season shall, in addition to the assessment fee and other penalties provided in the Boll Weevil Eradication Law and these regulations, be subject to a penalty fee of \$2 per acre.

E. ...

F. Repealed and Reserved.

G. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1604.1, 1609, 1612, and 1613.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Boll Weevil Eradication Commission, LR 21:20 (January 1995), amended LR 21:669 (July 1995), LR 23:195 (February 1997), LR 24:2231 (December 1998), LR 25:829 (May 1999), LR 29:859 (June 2003), LR 30:1142 (June 2004), LR 30:2443 (November 2004), LR 37:

Family Impact Statement

It is anticipated that the proposed action will have no significant effect on the (1) stability of the family, (2) authority and rights of parents regarding the education and supervision of their children, (3) functioning of the family, (4) family earnings and family budget, (5) behavior and personal responsibility of children, or (6) ability of the family or a local government to perform the function as contained in the proposed action.

Small Business Statement

It is anticipated that the proposed action 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 action to accomplish the objectives of applicable statutes while minimizing any anticipated adverse impact on small businesses.

Public Comments

Interested persons may submit written comments, data, opinions, and arguments regarding the proposed action. Written submissions are to be directed to Marc Bordelon, Director of the Boll Weevil Eradication Commission, Department of Agriculture and Forestry, 5825 Florida Boulevard, Baton Rouge, LA 70806 and must be received no later than 4 p.m. on April 25, 2011. No preamble regarding these proposed regulations is available.

Mike Strain, DVM
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Cotton Acreage Reporting and Collection of Assessments

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change will have no material impact on state expenditures but will result in a negligible increase in workload to the Department of Agriculture and Forestry as a result of assessment payments submitted to the state individually from cotton producers rather than in bulk from the

Farm Service Agency (FSA) of the U.S. Department of Agriculture. The rule change is required because the FSA has informed the state that it will no longer be directly involved in the reporting of cotton acreage to the state or in the collection of the annual assessment. The rule change directs cotton producers to report their cotton acreage and pay the established annual assessments (currently \$6 per acre planted) directly to the Department of Agriculture and Forestry rather than the FSA. Previously, the FSA would forward assessments to the department from producers in the form of checks made payable to the state

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed action is not anticipated to have a direct material effect on governmental revenues.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule change is not anticipated to have a material effect on the costs or economic benefits of directly affected persons or non-governmental groups. Individual cotton producers will have negligible expenses related to mailing the cotton acreage report and assessment to the department rather than submitting them directly to the FSA during required annual visits to declare planted acreage to the federal government.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed action is not anticipated to have a direct material effect on competition or employment.

Craig Gannuch
Assistant Commissioner
1103#019

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Civil Service
Civil Service Commission**

Temporary Suspension of Merit Increase Authority

On February 2, 2011 the Commissioner of Administration requested that the State Civil Service Commission continue the application of Civil Service Rule 6.14.1 for fiscal year 2011-2012 due to the projected \$1.6 billion dollar deficit in the state's budget for fiscal year 2011-2012. On March 2, 2011, the State Civil Service Commission agreed to propose amending Civil Service Rule 6.14.1 by extending the denial of authority to grant a merit increase in fiscal year 2011-2012.

Therefore, The State Civil Service Commission will hold a public hearing at 9:00 a.m. on Wednesday, April 6, 2011 to consider the adoption of the below proposed amended Rule. The hearing will be held in the Louisiana Purchase Room of the Claiborne Building, 1201 North Third Street, Baton Rouge. The Rule that will be considered at that meeting reads as follows:

Proposed Rule Suspending Merit Increases

Temporary Suspension of Merit Increase Authority

All provisions of the Merit Increase Rule shall be suspended for the period of July 1, 2011 through June 30, 2012. During this period of suspension, no appointing authority may grant a merit increase to any employee nor may any employee gain eligibility for a merit increase.

Consideration of this Rule is for the reasons given above and for the reasons given as explanation in General Circular 2011-005 that was issued on March 3, 2011 to announce consideration of the Rule. As noted in that general circular, all requirements in Civil Service Rules for Performance Planning and Review will remain in force and effect and must be met.

Jean Jones
Deputy Director

1103#054

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 131—Alternative Education Schools/Programs Standards (LAC 28:CXLIX.Chapters 1-19)

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 the establishment of *Bulletin 131—Alternative Education Schools/Programs Standards*. The implementation of Alternative Education Standards via Bulletin 131 will increase the quality of alternative education for students: (1) over aged for grade, (2) under-performing academically, (3) possessing learning disabilities, (4) displaying emotional or behavioral issues, (5) involved in criminal or juvenile justice systems, (6) pregnant or parenting, or (7) involved in drug abuse; and increase the number of high school graduates and decrease dropouts.

Title 28 EDUCATION

Part CXLIX. Bulletin 131—Alternative Education Schools/Programs Standards

Chapter 1. General Provisions

§101. Mission and Purpose

A. Exemplary alternative education develops a guiding mission and purpose that drives the overall operation of the program. All stakeholders (i.e., administrators, community representatives, parents/guardians, staff, and students) share in developing, implementing, directing and maintaining the mission and purpose. The mission and purpose include the identification of the target student population and promotion of the success of all students. Additionally, the mission and purpose embody high expectations for academic achievement, along with the nurturing of positive social interactions between staff and students.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 37:

Chapter 3. Support Services

§301. Leadership

A. Alternative education shall employ passionate, innovative, competent, and experienced leadership that has administrative and bureaucratic autonomy, as well as operational flexibility.

1. The administrators, teachers, and staff shall be committed to full implementation of alternative education's mission and core values.

2. Onsite leadership shall utilize and engage in a collaborative approach that ensures shared decision-making, high expectations for alternative education services, and continuous monitoring of quality.

3. The superintendent or designated district administrator shall sustain the independence of alternative education and allocate sufficient resources (i.e., financial or other necessary resources) to protect its integrity while supporting overall quality.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 37:

Chapter 5. Learning Environment

§501. Safety and Counseling

A. Alternative education shall maintain a safe, caring, and orderly climate and culture that promotes collegial relationships among students, parents/guardians, and program staff.

1. The culture and climate shall be characterized by a positive rather than punitive atmosphere for behavioral management and student discipline that encourages academic, behavioral, and social success.

2. Alternative education staff shall establish clear expectations for learning and student conduct.

3. The staff shall actively model and reward appropriate student behavior.

4. Alternative education shall use proven practices such as positive behavior support to organize student support systems.

5. Counseling services shall be responsive and focus on helping students who face obstacles that interfere with their personal/social, career, or educational development.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 37:

Chapter 7. Employee Qualifications

§701. Staffing and Professional Development

A. Alternative education shall be staffed with effective, innovative, and qualified individuals trained in current research-based teaching methods that facilitate active learning. Written professional development shall:

1. identify staff training needs;

2. match needs to relevant training;

3. emphasize quality implementation of research-based and best practices; and

4. establish performance evaluations aimed at improving program and student outcomes and overall program quality.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 37:

Chapter 9. Individualized Student Learning Plan

§901. Curriculum and Instruction

A. Alternative education shall:

1. maintain high academic expectations for students across academic, behavioral, life skill, service coordination, transitional, and career and technical education domains;

2. integrate a creative and engaging curricula and instructional methods that are relevant to the individual student's needs; and

3. use integrated, well organized framework of research-based curricula and teaching practices designed to address the whole student while continuing to meet or exceed federal and state standards.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 37:

Chapter 11. Progress Monitoring

§1101. Student Assessment

A. Alternative education shall include screening, progress monitoring, diagnostic and outcome-based measurements and procedures to improve short- and long-term results at the student level.

1. Student assessments shall be used to measure achievement and indentify specific learner needs.

2. The program shall exercise a research-based framework that values use of reliable measures to monitor student progress and adjust program services accordingly.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 37:

Chapter 13. Transition and Placement Process

§1301. Transitional Planning and Support

A. Alternative education shall have clear criteria and procedures for transitioning students from the traditional education setting to the alternative education setting, from the alternative education setting to the student's next education or workforce setting while ensuring timely access to community agencies and support services. This process calls for trained transitional personnel experienced in this particular area.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 37:

Chapter 15. Staff and Parent/Guardian Partnership

§1501. Parent/Guardian Involvement

A. Alternative education shall actively involve parents/guardians beyond parent/guardian-teacher meetings. The program shall emphasize a nonjudgmental, solution-focused approach that incorporates parents/guardians as respected partners throughout the student's length of stay.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 37:

Chapter 17. Community Representatives

§1701. Collaboration

A. Alternative education shall establish authentic partnerships with community resources based on trust, open communication, clearly defined goals, and shared responsibility which links the program, home, and community.

1. Collaborative partnerships shall promote opportunities for service learning, life skills, and career exploration for all students.

2. Community representatives shall have a role in the planning, resource development, and the decision-making process for alternative education.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 37:

Chapter 19. Data Collection and Analysis

§1901. Program Evaluation

A. Alternative education shall systematically conduct program evaluations using the monitoring tool for compliance and for continuous improvement.

B. Data triangulation shall be employed with three different sources of data collected for analysis. Data collection shall include the following items:

1. program implementation ratings;
2. student outcome data; and
3. student, parent/guardian, and staff surveys as mandated by Louisiana state law.

C. All sources of data shall be gathered and used to assess quality, provide a course for improvement, and to direct future activities. The guidelines presented herewith titled Alternative Education Standards, as well as state specific standards, shall serve as an appropriate means in which to evaluate the program.

D. Further information on full implementation can be found in the Louisiana Alternative Education Handbook found on the DOE website.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, 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., May 9, 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 131—Alternative Education
Schools/Programs Standards**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There will be no costs or savings to state or local governmental units as a result of this policy change. Draft standards for alternative education were developed by the Alternative Education Task Force to align with the National Alternative Education Association (NAEA) *Exemplary Practices in Alternative Education: Indicators of Quality Programming*. Based on extensive review and resulting recommendations, these standards were revised to incorporate appropriate policy language and to ensure alignment with state accountability policy. The only programmatic change is the adoption of Alternative Education standards.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
OR LOCAL GOVERNMENTAL UNITS (Summary)**

There is no effect on revenue collections of state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

There will be no estimated cost and/or economic benefit to directly affected persons or non-governmental groups.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

There will be no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
1103#040

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 1196—Louisiana Food and
Nutrition Programs, Policies of Operation
(LAC 28:XLIX.741, 1503, 1509, 1511, and 1517)

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 1196—Louisiana Food and Nutrition programs, Policies of Operation*: §741. Competitive Foods, §1503. Procurement Systems, §1509. Other Procurement Methods, §1511. Diversion of Commodities for Processing, and §1517. Contract Provisions. Due to changes from the 2010 Regular Legislative Session pertaining to the Child Nutrition Program, it was imperative to revise Chapter 7 in Bulletin 1196. These changes affect the policy regarding the sale of beverages to public high school students. In Chapter 15, the aggregate amount for purchases of materials and supplies was changed from \$20,000 to \$30,000. These revisions will consolidate necessary changes to Child Nutrition Programs and, therefore, make it more useful to the local systems throughout the state.

**Title 28
EDUCATION**

**Part XLIX. Bulletin 1196—Louisiana Food and
Nutrition Programs, Policies of Operation**

Chapter 7. Meal Planning and Service

§741. Competitive Foods

A. Act 331 of the 2005 Regular Louisiana Legislative Session establishes healthy standards for foods and beverages sold on school grounds within the times of 30 minutes prior to the normal school day through 30 minutes after the end of the normal school day.

1. When food and beverage items are sold through vending, concessions or other such sales on school grounds, outside the National School Lunch Program (NSLP) and School Breakfast Program (SBP), during the times mentioned, elementary and middle school children can be offered only those products that meet or exceed the content and nutritional standards established in Act 331.

2. When food items are offered to high school students on school grounds during the times mentioned, at least 50 percent of the items offered must meet the content and nutritional standards established in Act 331. Schools must use the approved list of snacks that meet the nutritional standards established in Act 331. The snack list has been approved by Pennington Biomedical Research Center. Pennington Biomedical Research Center may recommend additional nutritional restrictions for certain nutrients based on nutritional research.

3. Beverages offered to high school students on school grounds during the times mentioned must comply with the guidelines listed in Subsection F of this Section.

B. The approved list of snack items can be found on the Louisiana Department of Education (LDOE) website at <http://www.louisianaschools.net>. If an item is approved for inclusion on the list of allowable food items for sale on school grounds per Act 331 and SBESE Bulletin 1196, the list is only valid for the item as submitted with nutritional information to the Louisiana Department of Education. It is the responsibility of any school district/school, that chooses to sell such food/items, to ensure that products sold on school grounds meet the minimum standards required by Act 331 and SBESE Bulletin 1196.

C. Beverages that may be sold at any time beginning 1/2 hour before the start of the normal school day and ending 1/2 hour after the end of the normal school day for elementary and secondary schools include the following:

1. - 3. ...

D. Food items which may not be sold to elementary and secondary students at any time beginning 1/2 hour before the start of the normal school day and ending 1/2 hour after the end of the normal school day are listed below:

1 - 2. ...

3. fresh pastries, as defined by Pennington Biomedical Research Center.

E. Elementary Schools

1. After the end of the last lunch period, only items defined as healthy snacks may be sold. Healthy snacks must be listed on the Pennington Biomedical Research Center approved snack list, and are defined as having the following:

- a. 150 calories or less per serving;
- b. 35 percent or less of their calories from fat; and
- c. 30 grams or less of sugar per serving, (except unsweetened or uncoated seeds or nuts).

E.2. - F. ...

1. A high school shall mean any school whose grade structure falls within the 6 through 12 range and includes grades in the 10 to 12 range or any school that contains only grade 9 as defined in Act 331. Beginning the last 10 minutes of each lunch period, public high schools may choose to offer food and beverages of their choosing to students, so long as at least 50 percent of such items are healthy snacks. Healthy snacks are defined as having the following:

a. Food Items

i. At least 50 percent of food items offered must be healthy snacks. Healthy snacks must be listed on the Pennington Biomedical Research Center approved snack list, and are defined as having the following:

- (a). 150 calories or less per serving
- (b). 35 percent or less of their calories from fat;

and

(c). 30 grams or less of sugar per serving, (except unsweetened or uncoated seeds or nuts).

b. Beverages

i. Act 306 of the 2009 regular Louisiana legislative session states that beverages offered for sale to students in public high schools shall be comprised of the following:

- (a). bottled water;
- (b). no-calorie or low-calorie beverages that contain up to ten calories per eight ounces;
- (c). up to 12-ounce servings of beverages that contain 100 percent fruit juice with no added sweeteners and up to 120 calories per eight ounces;
- (d). up to 12-ounce servings of any other beverage that contains no more than 66 calories per 8 ounces;
- (e). at least 50 percent of non-milk beverages shall be water and no-calorie or low-calorie options that contain up to ten calories per eight ounces;
- (f). low-fat milk, skim milk, and nondairy milk.

2. - 8. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2151 (December 2001), amended LR 29:2029 (October 2003), LR 32:806 (May 2006), LR 37:

Chapter 15. Procurement

§1503. Procurement Systems

A. Competitive Sealed Bids (Formal)

1. All purchases of materials and supplies exceeding the aggregate sum of \$30,000 must be formally bid. Aggregate is defined as the dollar value of items purchased from a single source for a bid period: for example, quotations are obtained on a food item for a two-month period, but the foods are ordered weekly during that period. No weekly invoices total \$30,000, but the total invoices during the two-month period are over \$30,000. In this example, the aggregate amount is the value of all items purchased during the two-month period, so the item must be formally bid.

2. Breaking up purchases with the intent of circumventing formal advertising procedures is contrary to federal procurement regulations. Any change in the SFAs normal purchasing practices resulting in the aggregate amount purchased becoming less than \$30,000 must be documented for review and audit purposes.

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

a. the aggregate amount does not exceed \$30,000; and/or

b. the purchases are for highly perishable materials.

2. Purchases of materials and supplies for which the aggregate amount does not exceed \$30,000 shall be made by obtaining an adequate number of price quotations. The adequate number of price quotations for any items purchased under small purchase procedures that must be obtained is determined by local market conditions. Regardless of dollar value, the SFA must have open and free competition. If in a small rural parish there are only two produce vendors that provide service to the area, two quotes may be sufficient. However, in a larger metropolitan area where there are six produce vendors, all six should be given an opportunity to submit price quotations.

3. Price quotes can be oral or written. At least three telephone, handwritten or facsimile quotations must be obtained for materials and supplies costing less than \$30,000. A written confirmation of the accepted offer shall be obtained and made part of the purchase file. If quotations lower than the accepted quotations are received, the reasons for their rejection shall be recorded in the purchase file. All written documentation must be maintained on file for three years after final payments have been made for the federal fiscal year to which they pertain.

3.a. - 4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2183 (December 2001), amended LR 29:2032 (October 2003), LR 30:2460 (November 2004), LR 37:

§1509. Other Procurement Methods

A. - E. ...

1. Several methods can be used when purchasing from a sole or single source. A SFA can use small purchase procedures by soliciting quotes when the aggregate amount is under \$30,000. Documentation of contacts must be maintained. Competitive sealed bids (formal advertising) must be used when the aggregate amount is over \$30,000. If the aggregate amount of a purchase exceeds \$30,000, a SFA must go through the regular bidding process even if only one source is known. If only one bid was received, documentation would be available from the single source. If no bids were received, the SFA must re-bid or consider cooperative (piggyback) purchasing, or state bid contract. Non-competitive negotiation may also be used if the other methods have failed. The decision to use non-competitive negotiation must be adequately justified in writing and available for audit and review.

E.2. - G.1. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2186 (December

2001), amended LR 29:2033 (October 2003), LR 30:2460 (November 2004), LR 37:

§1511. Diversion of Commodities for Processing

A. Federal and state procurement regulations must be followed when contracting for the processing of commodities. All contracts exceeding the sum of \$30,000 shall be advertised and awarded to the lowest responsible bidder. Purchases less than \$30,000 shall be made by obtaining no fewer than three telephone, facsimile or hand written quotations. Bids shall be accepted only from approved USDA commodity processors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2187 (December 2001), amended LR 29:2033 (October 2003), LR 30:2460 (November 2004), LR 37:

§1517. Contract Provisions

A. - H.1....

I. Termination Provisions for Contracts over \$30,000

1. All contracts over \$30,000 must contain suitable provisions for termination by the grantee including the manner that the termination will be effected and the basis for settlement. In addition, such contracts shall describe the conditions under which the contract may be terminated for default because of circumstances beyond the control of the contractor.

J. Equal Opportunity Provision for Contracts over \$30,000

1. All contracts over \$30,000 must contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations 40 CFR Part 60.

K. - K.1. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2188 (December 2001), amended LR 30:2461 (November 2004), 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., May 9, 2011, to: Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine Pozniak
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Bulletin 1196—Louisiana Food and Nutrition Programs, Policies of Operation

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The policy revisions to Chapters 7 in Bulletin 1196, required by Act 306 of the 2009 Regular Legislative Session, pertain to the sale of beverages to public high school students. The changes in Chapter 15 update the procurement threshold from \$20,000 to \$30,000 for formal bidding to concur with the State. These changes will not result in an increase in costs or savings to local governmental units.

The State Board of Elementary and Secondary Education estimated cost for printing this policy change and first page of the fiscal and economic impact statement in the Louisiana Register is approximately \$656. Funds are currently budgeted for this purpose.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no estimated effect on revenue collection 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
1103#050

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. The JAG curriculum has already been approved for Carnegie credit in secondary schools. Currently, ten middle schools offer a JAG program. The addition of Carnegie credit will allow for these most at-risk students to have the opportunity to gain Carnegie credit before entrance into high school.

**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, or Jobs for America's Graduates.

B. Students who intend to take a GLE-based course for Carnegie credit in middle school should successfully complete a seventh grade course in that content area that addresses both the seventh and eighth GLEs. Upon completion of the course, the LEA shall administer a test based on the eighth grade GLEs. The purpose of the test is to determine student readiness for the Carnegie credit course. Upon request, the DOE will provide a test, if available, to the LEA for its use. The LEA shall publish in its Pupil Progression Plan the criteria for placement of students in the Carnegie credit course, one of which shall be the student's performance on the eighth grade GLE test. Other suggested criteria include the student's performance in the seventh grade course, standardized test scores, and teacher recommendation.

C. Middle school students may receive Carnegie credit for successfully completing the high school course provided that:

1. the time requirement for the awarding of Carnegie credit is met (§907);

2. the student has mastered the established high school course standards for the course taken;

3. the teacher is certified at the secondary level in the course taught, or the student has passed a credit examination in the subject taken.

a. The credit examination shall be submitted each year for approval to the Division of Student Standards and Assessments or the Division of Family, Career and Technical Education of the DOE.

b. School principals may request the state Algebra I credit examination by notifying the Division of Student Standards and Assessments.

D. The LEA may grant credit on either a letter grade or a Pass or Fail (P/F) basis, provided there is consistency system-wide.

E. Students who are repeating the eighth grade because they have scored unsatisfactory on the mathematics and/or English language arts components of LEAP shall not take or receive Carnegie credit for any high school courses in a content area in which they scored unsatisfactory on the eighth grade LEAP.

F. Students who are repeating the eighth grade because they have scored unsatisfactory on the mathematics and/or English language arts components of LEAP shall not take or receive Carnegie credit for any high school courses in a content area in which they scored unsatisfactory on the eighth grade LEAP.

1. In addition to the courses in §2321.A, these students may receive Carnegie credit in other elective courses.

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:

Family Impact Statement

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., May 9, 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**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The revisions to *Bulletin 741: Louisiana Handbook for School Administrators* Section 2321. Carnegie Credit for Middle School Students) are to allow for a course already being taught to now be able to count for Carnegie Credit in Middle School. There will be no estimated implementation costs.

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 cost and/or economic benefit 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
1103#046

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Compulsory Attendance (LAC 28: CXV.1103)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 741—Louisiana Handbook for School Administrators*: §1103, Compulsory Attendance. This policy revision to §1103, required by Act 927 of the 2010 Regular Legislative Session, removes the statement that students between the ages of 17 and 18 may withdraw from school prior to graduation with parental consent.

Title 28 EDUCATION

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

Chapter 11. Student Services

§1103. Compulsory Attendance

A. Students who have attained the age of seven years shall attend a public or private day school or participate in an approved home study program until they reach the age of 18 years. Any child below the age of seven who legally enrolls in school shall also be subject to compulsory attendance. Refer to Chapter 33 for information on home study programs.

B. A parent, tutor, or legal guardian who has a student who is under the age of 17 and is attending or is seeking admission to a National Guard Youth Challenge Program in this state, shall not be considered to be in violation of the compulsory attendance law.

1. A student, under 18 years of age, who withdraws from school prior to graduating from high school and who has been ruled to be a truant, pursuant to the provisions of Chapter 15 of Title VII of the Louisiana Children's Code, by a court of competent jurisdiction can be ordered by the court to exercise one of the following options within 120 days of leaving school.

a. Reenroll in school and make continual progress toward completing the requirements for high school graduation.

b. Enroll in a high school equivalency diploma program and make continual progress toward completing the requirements for earning such diploma.

c. Enlist in the Louisiana National Guard or a branch of the United States Armed Forces, with a commitment for at least two years of service, and earn a high school equivalency diploma during such service period.

B.2. - N. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:112; R.S. 17:221.3-4; R.S. 17:226.1; R.S. 17:233.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1273 (June 2005), amended LR 32:546 (April 2006), LR 32:1030 (June 2006), LR 33:2351 (November 2007), LR 35:641 (April 2009), LR 35:1097 (June 2009), LR 35:1475 (August 2009), LR 36:482 (March 2010), LR 36:1224 (June 2010), LR 37:

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., May 9, 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—Compulsory Attendance

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

This policy revision to Section 1103, required by Act 927 of the 2010 Regular Legislative Session, removes the statement that students between the ages of 17 and 18 may withdraw from school prior to graduation with parental consent. For each student who remains enrolled in a public school who otherwise would have withdrawn from school as a result of this law and policy change, there will be a slight increase in cost to the state and the local school district through the Minimum Foundation Program (MFP) to continue the education of the student.

The state cost will increase on average by \$5,044 (FY 11 MFP state average), and the local cost will increase on average by \$3,507 (FY 11 MFP local average) for each student who remains enrolled in the public school system. There are student enrollment counts of the MFP taken each school year on October 1 and February 1. If a student withdraws from school after the October 1 count and before the February 1st count, the full per pupil MFP allocation would be reduced from the district's payments. If a student withdraws from school after the February 1 count, the per pupil allocation would be reduced by half from the district's payments. The actual cost per student will depend on the district in which the student is enrolled, and the time of year the student may have withdrawn from school if this law and policy was not implemented.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be no costs or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
1103#042

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Connections Process (LAC 28: CXV.2907)

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*: §2907. Connections Process. *Connections* is a one year process for overage students to receive targeted instruction and accelerated remediation. The Connections Process will include the following elements: academic and behavioral interventions; mentoring; job skills training; TABE locator and battery assessments; committee reviews; parent meetings; individual prescriptions for instruction; individual graduation plans; and exiting pathways (High School Diploma via Accelerated Pathway: Core or Career Diploma; GED Pathway; State-approved Skills Certificate). Students on the High School Diploma and GED pathways may also work towards Industry Based Certification. This action is to revise *Bulletin 741—Louisiana Handbook for School Administrators*: §2907, in order to set forth policy regarding the newly developed Connections Process. There is no federal regulation attached to this action.

Title 28

EDUCATION

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

Chapter 29. Alternative Schools and Programs

§2907. Connections Process

A. The Connections Process replaces Louisiana's PreGED/Skills Option Program. Connections is a one year process for overage students to receive targeted instruction and accelerated remediation aimed at attaining a High School Diploma, High School Equivalency Diploma (by passage of GED tests), or State-approved Skills Certificate. The process includes a Connections Profile to track the following elements: academic and behavioral interventions; mentoring; job skills training; TABE locator and battery assessments; committee reviews; parent meetings; individual prescriptions for instruction; individual graduation plans; and exiting pathways. A school system shall implement the Connections Process and shall obtain approval from the DOE at least 60 days prior to establishment.

NOTE: Refer to High Stakes Testing Policy in Bulletin 1566—Guidelines for Pupil Progression Plans.

B. A program application describing the Connections Process shall be submitted and shall address the following program requirements.

1. Students who shall be 15 years of age or older by September 30th and are two years behind their peers academically. In addition, current PreGED/Skills Option students are eligible for entrance into one of the exiting pathways, pending committee review.

2. Enrollment is voluntary and requires parent/guardian consent.

3. Counseling/mentoring is a required component of the program.

4. The program shall have both an academic component and a career readiness component. Traditional Carnegie credit course work may be offered. Districts are encouraged to work with local postsecondary institutions, youth-serving entities, and/or businesses to enhance course offerings, content, and partnerships for promoting college and career readiness.

5. There shall be three exiting pathways for the Connections Process student provided the student has completed all requirements for LEAP or LAA2 (if applicable) testing. In addition, High School Diploma and GED students may work on an Industry Based Certification (recommended TABE Reading Grade Level Score = 8.0).

a. High School Diploma (Accelerated Pathway: Core or Career Diploma) Pathway for students meeting the following recommended goals/targets:

i. reading grade level score = 9.0;

ii. additional criteria to include Connections committee review of student progress (ex. WorkKeys/KeyTrain or Career Ready 101 scores) to determine exiting pathway.

b. GED Pathway for students meeting the following recommended goals/targets:

i. TABE reading grade level score = 7.0 to be considered for the Pre-GED Pathway and TABE reading grade level score = 9.0 to be considered for the GED Pathway;

ii. additional criteria to include Connections Committee review of student progress (ex. WorkKeys/KeyTrain or Career Ready 101 scores) to determine exiting pathway.

c. State-approved Skills Certificate for students meeting the following recommended goals/targets:

i. TABE reading grade level score = 5.0;

ii. additional criteria to include Connections Committee review of student progress (ex. WorkKeys/KeyTrain or Career Ready 101 scores) to determine exiting pathway.

6. The Connections Process shall include the following components:

a. district coordinator;

b. lead teacher/JAG specialist;

c. counselor (on-site);

d. ELA/math certified teachers;

e. CTE/IBC certified teachers;

f. special education certified teacher for SWDs;

g. teachers who are certified to offer Carnegie unit credits;

- h. mentor/JAG specialist;
- i. low teacher: student ratio will be required at each site: 1:15 or 1:25 with a paraprofessional in the class;
- j. TABE certified test administrators.

7. The Connections Process can be held on high school campuses, middle school campuses, or off site provided the above components exist.

8. Students will count in the October 1 MFP count.

9. Students will be included in School Accountability.

C. While enrolled as an eighth grader in the Connections Process, they shall be required to take the eighth grade LEAP or LAA2 (if applicable).

D. Further information on full process implementation can be found in the Connections Process Handbook on the Louisiana Department of Education website.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1308 (June 2005), amended LR 34:2032 (October 2008), LR 37:

Family Impact Statement

- 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., May 9, 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—Connections Process

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The Department of Education recommends relevant policy revisions to Bulletin 741: *Louisiana Handbook for School Administrators* as they relate to the elimination of the Pre-GED/Skills Options Program and the implementation of the newly developed *Connections Process* that will take its place. There will be no costs to state or local governmental units as a result of this policy change. The Louisiana Department of Education anticipates the costs for the Local Education Agencies to operate the Connections Process will be similar to the costs incurred in operating the Pre-GED Skills/Options Program.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be no estimated cost and/or economic benefit to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
1103#049

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—Approval for Alternative Schools/Programs (LAC 28: CXV.2903)

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: §2903. Approval for Alternative Schools/Programs. Implementing changes to Bulletin 741, including the introduction of standards will:*

Increase the quality of alternative education for students: (1) over aged for grade, (2) under-performing academically, (3) possessing learning disabilities, (4) displaying emotional or behavioral issues, (5) involved in criminal or juvenile justice systems, (6) pregnant or parenting, or (7) involved in drug abuse.

Increase the number of high school graduates and decrease dropouts.

Alternative school/programs are implemented according to BESE policy and state law.

**Title 28
EDUCATION**

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

Chapter 29. Alternative Schools and Programs §2903. Approval For Alternative Schools/Programs

A. Alternative schools/programs shall comply with prescribed policies and standards according to *Bulletin 131—The Louisiana Handbook for School Administrators* and for regular schools except for those deviations granted by BESE. Additional information can be obtained in the Louisiana Alternative Education Handbook found on the DOE website.

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

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

2. The DOE will provide BESE with an annual report from alternative schools/programs in June of each year.

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

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1308 (June 2005), amended LR 35:2318 (November 2009), LR 37:

Family Impact Statement

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., May 9, 2011 to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine Pozniak
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 741—Louisiana Handbook for School Administrators—Approval for Alternative Schools/Programs

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The Department of Education recommends relevant policy revisions to Bulletin 741: *Louisiana Handbook for School Administrators* relative to existing policy regarding alternative standards. The revisions are necessary to ensure alignment with the new Alternative Education Standards. There is no funding associated with this action; therefore, there will be no cost to state or local governmental units.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be no estimated cost and/or economic benefit to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
1103#048

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—Immunizations
(LAC 28:CXV.1121)

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*: §1121. Immunizations. The proposed addition to Bulletin 741 is to comply with the requirements of R.S. 17:170.3, which requires each city, parish and other local public school board that provides information on immunizations to provide information to parents or legal guardians on human papillomavirus.

Title 28

EDUCATION

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

Chapter 11. Student Services

§1121. Immunizations

A. - H. ...

I. Each LEA that provides information relative to immunizations shall provide to the parent or legal guardian of each student in grades six through twelve information relative to the risks associated with human papillomavirus and the availability, effectiveness, and known contraindications of immunizations against human papillomavirus. This information will be provided by the Department of Education.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:170.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1277 (June 2005), amended LR 33:429 (March 2007), LR 35:1476 (August 2009), LR 35:2322 (November 2009), 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., May 9, 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—Immunizations**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no savings to the state or local governmental units as a result of this policy change.

The proposed policy change will result in an estimated cost of \$164 to the state due to expense associated with publication of the proposed policy change in the *Louisiana Register*. There will be no economic impact to local governmental units as a result of the proposed policy change.

The proposed addition to Bulletin 741 is to comply with the requirements of R.S. 17:170.3, which requires each city, parish and other local public school board that provides information on immunizations to provide information to parents or legal guardians on human papillomavirus.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed policy change will not have any effect on revenue collections at the state or local governmental level.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed policy will create no costs or economic benefits to persons directly affected or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed policy change will have no effect on competition or employment.

Beth Scioneaux
Deputy Superintendent
1103#043

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—Religious Studies
(LAC 28: CXV.2367)

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: §2367. Religious Studies*. This policy revision to §2367 changes the name of the Religion courses for nonpublic schools to Religious Studies. This revision was recommended by the study group required by HR 204 of the 2010 Regular Legislative Session.

Title 28

EDUCATION

Part CXV. **Bulletin 741—Louisiana Handbook for School Administrators**

Chapter 23. **Curriculum and Instruction**

§2367. **Religious Studies**

A. A maximum of four units in religious studies shall be granted to students transferring from state-approved private and sectarian high schools who have completed such coursework. Those credits shall be accepted in meeting the requirements for high school graduation.

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 31:1298 (June 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., May 9, 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—Religious Studies**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

This policy revision to Section 2367 changes the name of the Religion courses for nonpublic schools to Religious Studies. This revision was recommended by the Study Group required by HR 204 of the 2010 Regular Legislative Session. This change 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
1103#047

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—Uniform Grading Policy (LAC 28: CXV.2302)

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*: §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.

Grading Scale for Regular Courses	
Grade	Percentage
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:

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., May 9, 2011, to: Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine Pozniak
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 741—Louisiana Handbook for School Administrators—Uniform Grading Policy

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

This policy, Section 2302, 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. This change 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
1103#045

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—Written Policies and Procedures (LAC 28: CXV.337)

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*: §337, Written Policies and Procedures. This policy revision to §337 requires local education agencies to have policies and procedures that address appropriate responses to the behavior of students with exceptionalities that may require immediate intervention. This policy revision is required by Act 698 of the 2010 Regular Legislative Session.

**Title 28
EDUCATION**

**Part CXV. Bulletin 741—Louisiana Handbook for
School Administrators**

Chapter 3. Personnel

§337. Written Policies and Procedures

A. - B. ...

C. Each LEA shall have policies and procedures that address, but are not limited to, the following:

1. - 25. ...

26. appropriate responses to the behavior of students with exceptionalities that may require immediate intervention (see for reference: *Guidelines for the Use of Seclusion Rooms and Restraint of Students with Exceptionalities*).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6; R.S. 17:7(29); R.S. 17:81; R.S. 17:240; R.S. 17:100.8.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1261 (June 2005), amended LR 33:429 (March 2007), LR 35:1101 (June 2009), LR 36:1224 (June 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., May 9, 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—Written Policies and Procedures**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

This policy revision to Section 337, required by to Act 698 of the 2010 Regular Legislative Session, requires local education agencies to have policies and procedures that address appropriate responses to the behavior of students with exceptionalities that may require immediate intervention. This change 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
1103#041

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 1706—Regulations for Implementation of the
Children with Exceptionalities Act—Regulations for
Students with Disabilities
(LAC 28:XLIII.151, 508, 511, 512, 514, and 905)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act*: Subpart 1. Regulations for Students with Disabilities, §151. Adoption of State Complaint Procedures and Early Resolution Program, §508. Due Process Hearing Request, §511. Impartial Due Process Hearing and Hearing Officer Appointments, §512. Hearing Rights, §514. Finality of Decision; Appeal; and Compliance with Hearing Decisions, and §905. Definitions. The Rule revises State Complaint Procedures and the Early Resolution Process. The Rule defines the actions that must be taken with regard to Due Process Hearing Requests, Impartial Due Process Hearing and Hearing Officer Appointments, Hearing Rights, Finality of the Decision and Appeal of the Decision, as well as Compliance with Hearing Decisions. Definitions were amended to include Division of Administrative Law (DAL) and Administrative Law Judge. The Rule change is required

to comply with Act 683 of the 2010 Regular Session of the Louisiana Legislature that transferred all hearings to the DAL.

**Title 28
EDUCATION**

**Part XLIII. Bulletin 1706—Regulations for
Implementation of the Children with Exceptionalities
Act**

**Subpart 1. Regulations for Students with Disabilities
Chapter 1. State Eligibility**

**§151. Adoption of State Complaint Procedures and
Early Resolution Program**

A. - C.2. ...

a. Informal complaints to the LDE shall only be made through the LDE's Intake Coordinator(s) who shall refer the complaint to the ERP representative of the LEA immediately, if possible, but not later than two business days after receiving the complaint.

2.b. - 3....

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2046 (October 2008), amended LR 36:1499 (July 2010), LR 37:

Chapter 5. Procedural Safeguards

§508. Due Process Hearing Request

A. General

1. A party, or the attorney representing a party, files a request for due process hearing by sending to the other party a written request for due process hearing (which shall remain confidential). The date of filing shall be the date a signed written request is received by the other party, either directly or through the LDE, if the written request is sent via certified mail, receipt requested, or through another carrier, showing with proof of delivery. The written request may also be sent via facsimile, however, if the request is sent via facsimile after 5:00 p.m., central standard time, the date of filing shall be the following business day.

2. ...

3. Within two business days of receipt, the LDE shall transmit the request for due process hearing to the Division of Administrative Law (DAL) who which shall docket the request and assign a hearing officer.

B. - D.1. ...

2. Within five days of receipt of notification under Paragraph D.1 of this Section, the hearing officer shall make a determination on the face of the written request for due process hearing, whether the due process hearing request meets the requirements of Subsection B of this Section, and shall immediately notify the parties and the LDE in writing of that determination. If a determination of insufficiency is made, such determination shall include the nature of the insufficiency and the request for a due process hearing shall be dismissed without prejudice.

E. - G ...

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2071 (October 2008), LR 37:

**§511. Impartial Due Process Hearing and Hearing
Officer Appointments**

A. ...

B. Agency Responsible for Conducting the Due Process Hearing. The due process hearings described in Paragraph A of this Section shall be conducted in accordance with law.

C. Impartial Hearing Officer. The DAL shall designate hearing officers who:

1. - 1.a....

b. shall possess knowledge of, and the ability to understand, the provisions of the IDEA, Federal and State regulations pertaining to the IDEA, and legal interpretations of the IDEA by Federal and State courts and educational placements in Louisiana school systems;

c. - d. ...

e. Repealed

2. - 2.b....

c. have represented an LEA or a parent as an attorney in education litigation within the previous three years;

3. ...

4. the DAL shall provide and maintain a current list of the Administrative Law Judges (ALJs) designated to hear IDEA hearings and a statement of the qualification of each of the ALJs;

5. the DAL shall ensure that impartial due process hearing officers designated pursuant to this Section have successfully completed a training program approved by the LDE. Additional training shall be required by the LDE whenever warranted by changes in applicable legal standards or educational practices or as determined necessary by the LDE;

6. appointments are renewed at the discretion of the DAL;

7. the DAL shall assign the hearing officer from the list of qualified hearing officers.

D. - D.1....

2. The DAL shall review any written challenge to the impartiality of the hearing officer and provide a written decision and notice to the parent and LEA within three business days after receipt of the written challenge.

3. If the DAL determines that doubt exists as to whether the proposed hearing officer is truly impartial, another hearing officer shall be immediately assigned.

E. - H. ...

1. A hearing officer must establish and maintain control of and manage the hearing. This includes:

a. assuring that self-represented litigants have the opportunity to meaningfully present their cases;

b. making decisions involving the identification, evaluation, educational placement, or the provision of a free appropriate public education to a child with a disability;

c. ordering an independent educational evaluation of a child at district expenses; and

d. extending the hearing decision timeline in accordance with §515 of this Chapter if the ALJ determines that good cause exists.

i. Good cause includes, but is not limited to, the time required for mediation or other settlement discussions,

independent educational evaluation, complexity and volume of issues, or finding or changing counsel.

2. ...

3. Repealed.

I. Prehearing Conference

1. The hearing officer may hold a prehearing conference in accordance with §510. The hearing officer must initiate the prehearing conference which may be conducted in person, at a location within the district, or by telephone. At the prehearing conference, the hearing officer must:

a. identify the questions that must be answered to resolve the dispute and eliminate claims and complaints that are without merit;

b. provide the self-represented litigant with a detailed explanation of trial procedures, burden of proof, elements of the claim, and remedies;

c. set up a scheduling order for the hearing and additional prehearing activities;

c. determine if the hearing can be disposed of without an evidentiary hearing and, if so, establish the schedule and procedure for doing so, and;

e. establish the management, control, and location of the hearing to ensure its fair, efficient, and effective disposition. The determination of the location of the hearing should not impose additional costs on any party.

J. Burden of Proof

1. The burden of proof at a due process hearing is on the party seeking relief.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2071 (October 2008), LR 37:

§512. Hearing Rights

A. General. Any party to a hearing conducted pursuant to §§507 through 513 or §§530 through 534 has the right to:

1. be accompanied, and advised, and represented by counsel and by individuals with special knowledge or training with respect to the problems of students with disabilities;

A.2. - C.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2071 (October 2008), LR 37:

§514. Finality of Decision; Appeal; and Compliance with Hearing Decisions

A. Finality of Hearing Decision. A decision made in a hearing conducted pursuant to §§507 through 534 is final, except that any party involved in the hearing may appeal the decision under the provisions of §516.

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

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2074 (October 2008), LR 37:

Chapter 9. General

§905. Definitions

* * *

Administrative Law Judge (ALJ)—is an employee of the Division of Administrative Law and has the qualifications and authority as listed in Title 49, Section 994.

* * *

Division of Administrative Law (DAL)—the division in the Division of Administration that conducts hearings and renders decisions on federal and state laws and regulations.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2074 (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? No.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., May 9, 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 1706—Regulations for Implementation of the Children with Exceptionalities Act—Regulations for Students with Disabilities

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The Louisiana Department of Education (LDOE) will transfer \$50,000 per year to the Division of Administrative Law (DAL) to process all requests for due process hearings related to Special Education. This amount is consistent with what the LDOE has spent annually to conduct its own due process hearings.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no impact on revenue collections for the state or local governments.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The LDOE contracts with approximately four private attorneys annually to provide services for Special Education due process hearings. The attorneys will no longer provide the services for the LDOE.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no effect on competition and employment in the public sector. The DAL will use existing hearing officers/judges to conduct the due process hearings. There is an impact to private attorneys with whom the LDOE contracted to provide these services. For approximately four contracted attorneys, the costs were approximately \$50,000 per year.

Beth Scioneaux
Deputy Superintendent
1103#051

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Nonpublic Bulletin 741—Louisiana Handbook for Nonpublic School Administrators (LAC 28:LXXIX. 2109, 2331, and 2335)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Nonpublic Bulletin 741—Louisiana Handbook for Nonpublic School Administrators*: §2109. High School Graduation Requirements, §2331. Social Studies, and §2335. Course Credit for Religious Studies. These policy revisions change the name of the Religion courses for nonpublic schools to Religious Studies. These revisions were recommended by the Study Group required by HR 204 of the 2010 Regular Legislative Session.

Title 28

EDUCATION

Part LXXIX. Nonpublic Bulletin 741—Louisiana Handbook for Nonpublic School Administrators

Chapter 21. Curriculum and Instruction

§2109. High School Graduation Requirements

A. - E.3.c.ii. ...

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: world history, world geography, western civilization, AP European history, law studies, psychology, sociology, African American studies, or religious studies I, II, III, or IV.

D.5. - F.7. ...

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:

Chapter 23. High School Program of Studies

§2331. Social Studies

A. - C. ...

D. One unit of religious studies (§2335) may be used as the fourth social studies course required for the Louisiana Core 4 curriculum.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2356 (November 2003), amended LR 31:3088 (December 2005), LR 34:2102 (October 2008), LR 37:

§2335. Course Credit for Religious Studies

A. A maximum of four units in religion shall be granted to students transferring from state-approved private and sectarian high schools who have completed such course work. Those credits shall be accepted in meeting the requirements for high school graduation.

Course Title	Units
Religious Studies I	1
Religious Studies II	1
Religious Studies III	1
Religious Studies IV	1

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2356 (November 2003), amended LR 31:3088 (December 2005), LR 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., May 9, 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: Nonpublic Bulletin 741—Louisiana
Handbook for Nonpublic School Administrators**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
These policy revisions to Sections 2109, 2331, and 2335 in *Bulletin 741: Louisiana Handbook for Nonpublic School Administrators* change the name of the Religion courses for nonpublic schools to Religious Studies. These revisions were recommended by the Study Group required by HR 204 of the 2010 Regular Legislative Session. 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
1103#044

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Organization, Operations (LAC 28:I.Chapters 5 and 7)

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 7, Operations.

Louisiana Administrative Code, Title 28, Part I, §501 contains the committee structure for the Board of Elementary and Secondary Education. BESE duties will be performed in four committees aligned with key BESE education initiatives. The committee structure will assist the board in the exercise of its powers and responsibilities as defined by the constitution and statutes.

Louisiana Administrative Code, Title 28, Part I, §503 contains the authority, charge and membership of the Board of Elementary and Secondary Education advisory councils. Currently, business is referred to the advisory councils by BESE. Language is being modified in this Section to allow advisory council business items to be referred by BESE and the Department of Education.

Louisiana Administrative Code, Title 28, Part I, Chapter 7 contains the Board of Elementary and Secondary Education operational procedures. BESE is changing operational procedures to conform to the current BESE meeting schedule and modifying meeting protocol to be followed by board members.

**Title 28
EDUCATION**

**Part I. Board of Elementary and Secondary Education
Chapter 5. Organization**

§501. Committees

A. As a means of assisting the board in the exercise of its powers and responsibilities as defined in the constitution and by law, committees are created.

B. Committees, composed of not less than three members of the board and appointed by the president, are:

1. Academic Goals and Instructional Improvement Committee. The following are examples of issues that will be considered by the Academic Goals and Instructional Improvement Committee.

- a. Primary areas of responsibility (AORs):
 - i. accountability, academic standards, and assessment;
 - (a) raising accountability; and
 - (b) common standards policy concepts;
 - ii. improving academic performance and closing the achievement gap;
 - (a) goal office policy concepts and subcommittee reports;
 - iii. red tape reduction;
 - (a) policy waivers;
 - iv. BESE special schools and nonpublic school management;
 - (a) Brumfield v. Dodd approval; and
 - (b) academic classifications.

b. Issues included on “as needed” basis in AORs:

- i. critical goal office updates;
- ii. alternative, special education, and sub-population issues; and
- iii. school/community support.

2. Administration and Finance Committee. The following are examples of issues that will be considered by the Administration and Finance Committee.

- a. Primary areas of responsibility (AORs):
 - i. board operations;
 - (a). calendars, travel, etc.;
 - (b). evaluations:
 - (i). State Superintendent of Education;
 - (ii). BESE Executive Director, etc.; and
 - (c). responses to legislative action (studies/reports);
 - ii. financial management and performance;
 - (a). budgets:
 - (i). BESE;
 - (ii). LDE;
 - (iii). RSD;
 - (iv). SSD;
 - (b). contracts and grants;
 - (c). MFP:
 - (i). analysis;
 - (ii). planning; and
 - (iii). redesign;
 - (d). 8(g) grant program; and
 - (e). RSD capital projects.
- b. Issues included on “as needed” basis in AORs:
 - i. financially at-risk reports (charters and school systems).

3. Educator Effectiveness Committee. The following are examples of issues that will be considered by the Educator Effectiveness Committee.

- a. Primary areas of responsibility (AORs):
 - i. educator certification;
 - (a). request for hearings and hearings; and
 - (b). policy concepts;
 - ii. educator evaluation and performance;
 - (a). analysis; and
 - (b). policy concepts;
 - iii. educator preparation;
 - (a). program approval (i.e., alternative preparation).
- b. Issues included on “as needed” basis in AORs:
 - i. Advisory Committee on Educator Evaluation (ACEE) updates.

4. School Innovation and Turnaround Committee. The following are examples of issues that will be considered by the School Innovation and Turnaround Committee.

- a. Primary areas of responsibility (AORs):
 - i. charter school performance, support, and oversight;
 - (a) amendment requests, approval, extension, and renewal, etc.;
 - ii. RSD performance management;
 - (a) school accountability—annual performance and exit eligibility; and
 - (b) school intervention decisions.
- b. Issues included on “as needed” basis in AORs:
 - i. enrollment policies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:415 (March 2008), amended LR 35:223 (February 2009), LR 35:1874 (September 2009), LR 36:2851 (December 2010), LR 37:

§503. Advisory Councils

A. Functions. In general, the function of an advisory council is to advise the board, directly or through its committees, in the discharge of its policymaking, supervisory control, and budgetary duties and responsibilities. Specific functions of an advisory council are determined by the creating law or policy. Advisory councils deal exclusively with matters referred to them by the board or the LDE. Matters referred to advisory councils are those that require external input regarding funding decisions, policy matters that need to be reviewed for local impact, bulletin revisions containing policies or supervisory controls, and matters particular to a council for which it was created. The LDE staff provides the board with a statewide and nationwide perspective on certain issues, while advisory councils respond from a local or community perspective.

- B. - C.1.c.iii. ...
 - iv. Consider all matters referred by the board or the LDE.
- 2. - 2.c.i. ...
 - ii. Consider all matters referred by the board or the LDE.
- 3. - 3.c. ...
 - i. Consider all matters referred by the board or the LDE.
 - ii. Recommendations from the Superintendents' Advisory Council shall go to the appropriate board

committee. The LDE shall provide responses to the various recommendations.

- 4. - 4.c.v. ...
 - vi. Review and comment on the LDE's recommendations for disbursal of competitive grants and awards to local education agencies and qualified nonprofit entities; and
 - vii. Consider all matters referred by the board or the LDE.
- 5. - 5.c.i. ...
 - ii. Consider all matters referred by the board or the LDE.
- d. Special Advisory Councils/Task Forces/Commissions/Study Groups. Special advisory groups may be created by the board with a limited charge and scope to study a specific topic as referred by the board.

D. Officers. Unless otherwise provided by state or federal law or board policy, each advisory council shall select from among its membership in attendance a chair and a vice-chair. Elections shall be held annually at the first meeting in a fiscal year, and the councils shall report election results to the board.

E. - F. ...
1. Each advisory council shall meet as scheduled in order to consider referrals from the board or the LDE. Special meetings shall be by call of the board, and emergency meetings may be called at the discretion of the executive director.

2. ...
3. Notices of council meetings shall be distributed to council members by the board staff at least 10 days in advance of a meeting, calendar permitting. All council meetings shall be conducted in accordance with the Louisiana Open Meetings Law (R.S. 42:6.1). In the event that no items have been referred by the Board to an advisory council for consideration, there are no items pending on an advisory council agenda, and the LDE has no items to bring forward to the advisory council at least 10 days prior to a scheduled meeting, the meeting shall be cancelled and the members shall be notified of the cancellation.

4. - 5. ...
a. Requests from advisory councils for data/reports must be made in the form of a motion, requesting that the board direct the LDE or BESE staff to provide such information to the council making the request.

6. The minutes and reports of each advisory council shall be presented to the board's executive director for referral to the board. Actions taken in response to referrals shall be forwarded to the appropriate committee(s). A committee, after consideration of the recommendations of the advisory council, shall report its recommendations to the board for final action.

7. All meetings of advisory councils shall be considered official functions of the board to assist in the execution of board responsibilities and duties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:6(A)(15), R.S. 17:24.4, R.S. 17:11, 34 CFR 300.650-652, and R.S. 17:1954.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:416 (March 2008), amended LR 35:1874 (September 2009), LR 36:2851 (December 2010), LR 37:

Chapter 7. Operations

§701. Public Meeting Notice

A. ...

B. Public Notice. Public notices for regular and special meetings of the board, its committees, and its advisory councils shall be made as required by Louisiana's Open Meetings Law. A 24-hour written public notice shall be given of any regular, special, or rescheduled meeting of the board, its committees, and its advisory councils. The 24-hour public notice shall include the agenda, date, time, and place of the meeting, as posted on the BESE website.

C. Cancellations. Cancellations of any board or committee meetings shall be made only after a 24-hour public notice. In the event of the absence of a quorum, at the scheduled time and place of the meeting, the meeting shall be cancelled because a quorum must be present in order that official business may be legally transacted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 42:5, R.S. 42:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:420 (March 2008), amended LR 37:

§703. Regular and Special Meeting Schedules

A. R.S. 17 requires the board to meet in regular session in January of each year and at such other times as are fixed by the board.

B. The board and committee meeting schedules for the upcoming calendar year are approved in October of each year.

C. Regular Board Meetings. Generally, regular meetings of the board shall convene on the third Wednesday of the month. A simple majority of board members may agree to meet on another day.

D. Special Board Meetings. Special meetings of the board may be held upon call of the president, and the president shall call a special meeting whenever requested to do so by a majority of the total members of the board.

E. Joint Board of Regents (BOR)/BESE Meetings. The Board of Regents shall meet with BESE at least twice a year to coordinate programs of public elementary, secondary, vocational-technical, career, and higher education.

F. Regular Committee Meetings. The chair of each committee of the board shall conduct regular committee meetings at such times as scheduled for consideration of agenda items.

G. Special Committee Meetings. Special meetings of a committee may be held upon call of the committee chair, and the chair shall call a special meeting whenever requested to do so by a majority of the total named members of the committee.

H. Committee of the Whole

1. The board may, if it so desires, constitute itself as a committee rather than as a full body and proceed to discuss matters as if it were in a committee, i.e., with relaxed rules.

2. When the board convenes itself as a Committee of the Whole, it acts as any committee, which has received a referral(s) from the board. Its discussion is limited to the item(s) of referral, and it has no greater authority than a regular committee. The board president convenes and adjourns the meeting, and each committee chair presides over that portion of the meeting pertaining to the issues routinely considered by his/her committee. Votes are not

final, and committee actions are considered to be recommendations from the committee to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3(E), R.S. 17:6(A)(10), and Article VIII, Section 5(D).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:420 (March 2008), amended LR 35:1874 (September 2009), LR 37:

§705. Agenda

A. - B.3. ...

C. Distribution and Posting of the Agenda. The agenda for board and committee meetings shall be distributed to board members at least 10 days prior to the meeting date and posted on the web at <http://www.louisianaschools.net>.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:420 (March 2008), amended LR 37:

§709. Board and Committee Meeting Protocol

A. - B.1. ...

2. The BESE staff member facilitating a meeting shall read each agenda item and staff recommendation prior to the matter being considered. If the matter involves a report or presentation by an LDE or BESE staff member or other authorized representative, he/she may make the presentation and members may discuss and ask questions regarding the matter prior to the making of a motion.

B.3. - C.3. ...

4. At the board meeting, when approving committee minutes and acting on committee recommendations, any board member wishing to address an item must have been in attendance at the committee meeting in which the action was taken.

D. Rules of Conduct

1. Board members and staff should be on time for all meetings.

2. - 9. ...

10. Board members are asked to remain seated when individuals are making presentations to the board or receiving recognition by the board, as it is always an honor to be recognized by state-level officials.

11. Cell phones and other electronic devices should be turned off or taken to the side rooms for conversations when activated.

12. - 13. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 42:4.2, R.S. 17:3(C), R.S. 42:5(C), and R.S. 42:6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:421 (March 2008), amended LR 37:

§713. Public Comments

A. In order to carry on its business in an orderly and efficient manner, the board utilizes committees. Full discussion of board business usually occurs at the committee level, and public comment should ideally be at that time rather than after a recommendation has been forwarded to the board. Opportunity to comment publicly on a committee or board agenda item may be provided to a representative number of proponents and opponents according to the following procedures.

1. - 9. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) and R.S. 42:5(D).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:422 (March 2008), amended LR 36:59 (January 2010), LR 37:

§719. Minutes

A. In accordance with the Open Meetings Law, the board shall keep written minutes of all of its open meetings. All meetings of committees and advisory councils shall be considered official functions of the board to assist in the execution of board responsibilities and duties; and actions of the committees and advisory councils, to be operative, shall be recorded and presented to the board at its next regular meeting.

B. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:7.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:423 (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., May 9, 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: Organization, Operations

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Louisiana Administrative Code, Title 28, Part I, Section 501 contains the committee structure for the Board of Elementary and Secondary Education. BESE duties will be performed in four committees aligned with key BESE education initiatives. The committee structure will assist the board in the exercise of its powers and responsibilities as defined by the constitution and statutes.

Louisiana Administrative Code, Title 28, Part I, Section 503 contains the authority, charge and membership of the Board of Elementary and Secondary Education advisory

councils. Currently, business is referred to the advisory councils by BESE. Language is being modified in this section to allow advisory council business items to be referred by BESE and the Department of Education.

Louisiana Administrative Code, Title 28, Part I, Chapter 7 contains the Board of Elementary and Secondary Education operational procedures. BESE is changing operational procedures to conform to the current BESE meeting schedule and modifying meeting protocol to be followed by board members.

This action will have no fiscal effect other than an estimated cost of \$492 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.

Brad Smith
Finance/Legislative Specialist
1103#052

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Environmental Quality
Office of the Secretary**

Solid Waste
(LAC 33:VII.Chapters 1, 3, 4, 5,
7, 13, 15, 30, and 103)(SW053)

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 solid waste regulations, LAC 33:VII.Subpart 1 and 2 (SW053).

The solid waste regulations are being updated. The new Rule will change the way solid waste permits are issued along with the application process for solid waste permits. Other changes will include definition changes, additional exemptions, and the establishment of a new annual compliance certification requirement.

The current solid waste permit system is not as efficient or productive as it could be. The current system has resulted in a backlog of pending solid waste permits that is unacceptable to the agency, the regulated community and the public. The regulation changes will allow for a more direct permit approach that will limit the need for notices of deficiencies to be issued to permit applicants and will also enable DEQ surveillance personnel to inspect these facilities more appropriately by having a permit that is written with clearer conditions. The Rule will also provide additional clarification in definitions and exemptions. The basis of this Rule is to make necessary changes and clarifications in the solid waste regulations and to allow for a better permit

process. 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 VII. Solid Waste

Subpart 1. Solid Waste Regulations

Chapter 1. General Provisions and Definitions

§115. Definitions

A. For all purposes of these rules and regulations, the terms defined in this Section shall have the following meanings, unless the context of use clearly indicates otherwise.

* * *

Closure Permit—written authorization issued by the administrative authority to a person for the closure of a facility used to process or dispose of solid waste in accordance with the Act, these regulations, and specified terms and conditions.

* * *

General Permit—written authorization issued by the administrative authority to allow for a specific activity or type of operation, not based on a specific site, to process or dispose of solid waste in accordance with the Act, these regulations, and specified terms and conditions.

* * *

Incinerator Waste-Handling Facility—a facility that processes solid waste by thermally oxidizing and/or decomposing the solid waste in an incinerator.

* * *

Non-Processing Transfer Station—a solid waste facility where solid waste is transferred directly or indirectly from collection vehicles to other vehicles for transportation without processing, except compaction used for the reduction of volume in waste (see *Process*).

* * *

Principal Executive Officer—the chief executive officer of a state or federal agency, or a senior executive officer having responsibility for the overall operations of a principal geographic or functional unit of a state or federal agency [ex: regional administrators of EPA].

* * *

Process—a method or technique, including recycling, recovering, compacting (but not including compacting that occurs solely within a transportation vehicle or at a non-processing transfer station), composting, incinerating, shredding, baling, recovering resources, pyrolyzing, or any other method or technique that is designed to change the physical, chemical, or biological character or composition of a solid waste to render it safer for transport, reduced in volume, or amenable for recovery, storage, reshipment, or resale. The definition of *process* does not include treatment of wastewaters to meet state or federal wastewater discharge permit limits. Neither does the definition include activities of an industrial generator to simply separate wastes from the manufacturing process.

* * *

Regulatory Permit—written authorization promulgated into the solid waste regulations for the construction, installation, modification, operation, closure, or post-closure of a facility used or intended to be used to process or dispose

of solid waste in accordance with the Act, these regulations, and specified terms and conditions.

* * *

Responsible Corporate Officer—one of the following persons employed by the corporation: president; treasurer; secretary; vice-president in charge of a principal business function; or any other person who performs similar policy or decision-making functions of the corporation; or the manager of one or more manufacturing, production, or operating facilities, provided that the manager is authorized to make management decisions that govern the operation of the regulated facility, including having the explicit or implicit duty of making major capital investment recommendations and initiating and directing other comprehensive measures to ensure long term environmental compliance with environmental laws and regulations, and can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit applications, and the manager has the authority to sign documents assigned or delegated in accordance with corporate procedures. The administrative authority will assume that these corporate officers have the requisite authority to sign permit applications and certifications unless the corporation has notified the administrative authority to the contrary.

* * *

Responsible Official—the person who has the authority to sign applications for permits and certifications of compliance. For corporations, this person shall be a *responsible corporate officer*. For a partnership or sole proprietorship, this person shall be a partner or the proprietor, respectively. For a municipality, state agency, federal agency, or other public agency, this person shall be a ranking elected official or a *principal executive officer* of a state or federal agency.

* * *

Silty Clay—soils that meet the group designations of *CL* or *CH* in the Unified Soil Classification System as contained in the American Society for Testing and Materials (ASTM) standard D2487-06e1.

* * *

Solid Waste—any garbage, refuse, or sludge from a waste treatment plant, water-supply treatment plant, or air pollution-control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, agricultural operations, and from community activities, and construction/demolition debris. *Solid waste* does not include solid or dissolved material in domestic sewage; solid or dissolved materials in irrigation-return flows or industrial discharges that are point sources subject to permits under R.S. 30:2074; source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (68 Stat. 923 et seq.), as amended (42 U.S.C. Section 2011 et seq.); or hazardous waste subject to permits under R.S. 30:2171 et seq.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2154.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 22:279 (April 1996), amended by the Office of Waste Services, Solid

Waste Division, LR 23:1145 (September 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2514, 2609 (November 2000), amended by the Office of Environmental Assessment, LR 31:1576 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 33:1019 (June 2007), LR 34:1023 (June 2008), LR 34:1399 (July 2008), LR 37:

§117. Experimental Operations for New Technologies

A. This Section allows applicants to submit requests allowing for experimental operations for new technology (e.g., use of alternate daily cover) prior to submitting a permit application or modification. No experimental operations for new technologies shall be implemented without prior approval from the administrative authority.

B. - D. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:1026 (June 2007), amended LR 37:

Chapter 3. Scope and Mandatory Provisions of the Program

§303. Wastes Not Subject to the Permitting Requirements or Processing or Disposal Standards of These Regulations

A. The following solid wastes, when processed or disposed of in an environmentally sound manner, are not subject to the permitting requirements or processing or disposal standards of these regulations:

1. - 7. ...

8. agricultural wastes, including manures, that are removed from the site of generation by an individual for his own personal beneficial use on land owned or controlled by the individual. The amount of wastes covered by this exemption shall not exceed 10 tons per year (wet-weight) per individual per use location. To qualify for this exemption records documenting the amount of wastes used for beneficial use on land owned or controlled by the generator shall be maintained. These records shall be kept for a minimum period of two years;

9. ...

10. woodwastes that are beneficially-used in accordance with a Best Management Practice Plan approved in writing by the Department of Agriculture and submitted to the Office of Environmental Services, provided that the generator notifies the Office of Environmental Services of such activity at each site in accordance with LAC 33:VII.401.A. Woodwastes not being properly managed in accordance with the Best Management Practice Plan approved by the Department of Agriculture do not meet this exemption.

11. - 13. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of the Secretary, LR 24:2250 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2515 (November 2000), repromulgated LR 27:703 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2486 (October 2005), LR 33:1027 (June 2007), LR 33:2140 (October 2007), LR 37:

§305. Facilities Not Subject to the Permitting Requirements or Processing or Disposal Standards of These Regulations

A. The following facilities that are operated in an environmentally sound manner are not subject to the permitting requirements or processing or disposal standards of these regulations:

1. - 8.a. ...

b. the facility shall comply with applicable Louisiana water quality regulations (LAC 33:Part IX); and

c. the facility shall comply with the perimeter barrier, security, and buffer zone requirements in LAC 33:VII.719.B;

9. - 9.d. ...

e. the facility shall comply with applicable Louisiana water quality regulations (LAC 33:Part IX);

10. ...

11. recycling facilities, as described in LAC 33:VII.303.A.3, that receive only source-separated recyclables;

12. hospitals and other health care facilities that store or treat regulated infectious waste generated on-site or that accept waste from off-site wholly- or partly-owned subsidiaries; and

13. transportation vehicles and municipal or parish collection containers that collect and compact solid waste.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2154.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 22:279 (April 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1264 (June 2000), LR 26:2515, 2609 (November 2000), repromulgated LR 27:703 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2486 (October 2005), LR 33:1028 (June 2007), LR 33:2140 (October 2007), LR 37:

§315. Mandatory Provisions

A. ...

B. Storage of Wastes. No solid waste shall be stored or allowed to be stored in a manner that may cause a nuisance or health hazard or detriment to the environment as determined by the administrative authority. Unless authorized or approved by the administrative authority, no solid waste shall be stored or allowed to be stored at an off-site location unless such off-site location is an authorized transfer station or collection, processing, or disposal facility. Solid wastes may not be stored on-site for greater than one year, unless the Office of Environmental Compliance grants prior approval to store the material for a specified and limited time period that is greater than one year. Upon request from the administrative authority, the generator shall provide records documenting the time frame that waste has been stored.

C. - O. ...

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

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

amended by the Office of Waste Services, Solid Waste Division, LR 23:954 (August 1997), LR 23:1145 (September 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2516 (November 2000), LR 30:1675 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2487 (October 2005), LR 33:1030 (June 2007), LR 34:1400 (July 2008), LR 36:1240 (June 2010), LR 37:

Chapter 4. Administration, Classifications, and Inspection Procedures for Solid Waste Management Systems

§407. Inspection Types and Procedures

A. Classification Inspection. A classification inspection is required for all facilities not previously classified, and each facility's initial classification is based on this inspection. It is performed after the department receives notification of operations (LAC 33:VII.401.A).

B. ...

C. Initial Start-Up Inspection

1. Upon issuance of a permit or modification requiring upgrades to an existing unit, or construction of a newly permitted unit, a start up inspection may be made after the permit holder submits a construction certification to the Office of Environmental Services, signed by a professional engineer licensed in the state of Louisiana, certifying that the upgrade to an existing unit, or construction of a newly permitted unit or a discrete portion thereof as identified in a construction schedule included in the permit, is constructed and/or upgraded in accordance with the permit or modification, and as specified in the permit or modification application.

2. Upon renewal of an existing permit where no physical changes are required, no construction certification shall be required to be submitted, and no start-up inspection shall be initiated. The permit holder may continue use of the unit(s) upon the effective date of the renewal permit.

3. If the administrative authority determines a start-up inspection is required pursuant to Paragraph 1 of this Subsection, the start-up inspection shall be initiated within 15 working days of receipt of certification by the Office of Environmental Services unless a longer time period is set by mutual agreement.

4. Within 15 working days after a new, existing, or modified facility has undergone an initial start-up inspection, or within 30 days of receipt of the construction certification, the administrative authority shall either issue an approval of the construction and or upgrade or a notice of deficiency to the permittee, unless a longer time period is set by mutual agreement.

D. Construction Inspections. At least 10 days prior to commencing construction of a liner, leak-detection system, leachate-collection system, or monitoring well at a Type I or Type II facility, the permit holder shall notify the Office of Environmental Services, in writing, of the date on which construction will begin, in order to allow a representative of the department the opportunity to witness the construction. Written notification under this Subsection is not required if the construction notification is included in a report required by LAC 33:VII.527.

E. Closure Inspections. Closure inspections will be conducted within 30 days after the Office of Environmental Services has received written notice from the permit holder

that closure requirements have been met in accordance with the approved closure permit or closure plan for those facilities that began closure activities in accordance with an approved closure plan prior to [INSERT DATE OF PROMULGATION] and the permit holder has submitted a request for a closure inspection. Closure inspections shall be conducted before backfilling of a facility takes place. The administrative authority reserves the right to determine if a facility has been closed properly.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2517 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2487 (October 2005), LR 33:1032 (June 2007), LR 33:2142 (October 2007), LR 37:

Chapter 5. Solid Waste Management System Subchapter A. General Standards for Nonpermitted Facilities

§501. Standards Governing Industrial Solid Waste Generators

NOTE: Former §501 has been repealed.

A. Annual Reports

1. Generators of industrial solid waste shall submit annual reports to the Office of Management and Finance listing the types and quantities, in wet-weight tons per year, of industrial solid waste they have disposed of off-site. This requirement does not apply to those generators who are also permit holders required to submit annual certifications of compliance in accordance with LAC 33:VII.525.

A.2. - C. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2521 (November 2000), repromulgated LR 27:703 (May 2001), amended by the Office of Environmental Assessment, LR 30:2024 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2490 (October 2005), LR 33:1033 (June 2007), LR 33:2142 (October 2007), LR 37:

§503. Standards Governing Solid Waste Accumulation and Storage

NOTE: Former §503 has moved to §401.

A. Solid Waste Accumulation

1. No solid waste shall be stored or allowed to be stored long enough to cause a nuisance, health hazard, or detriment to the environment as determined by the administrative authority, and no solid waste shall be stored for greater than one year without prior approval from the Office of Environmental Compliance. The facility shall maintain records indicating the time frame waste has been stored.

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

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S 30:2154.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of the Secretary, Legal Affairs Division, LR 33:1033 (June 2007), LR 34:613 (April 2008), LR 37:

§507. Standards Governing Collection Facilities for Solid Waste

NOTE: Former §507 has moved to §405.

A. - C.4. ...

D. Inspections of collection facilities shall be made at least weekly by the owner/operator looking for cleanliness of the site, overfill of containers, closed lids, leaking containers, and deterioration of containers. Inspections shall be documented, and the records shall be maintained for a period of two years and available for inspection within 24 hours of request.

E. - F. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2609 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:1034 (June 2007), LR 37:

Subchapter B. Permit Administration

§509. Permit System

NOTE: Former §509 has moved to §407.

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

ii. to allow operations to continue at an existing facility while a closure plan or closure permit application is being processed or while a facility is being closed in accordance with an approved closure plan; or

iii. ...

b. Temporary permits that may have been issued in the form of administrative orders, compliance orders to upgrade, orders to upgrade, compliance orders to close, orders to close, and settlement agreements prior to February 20, 1993, may remain in effect until otherwise determined by the administrative authority.

c. Temporary permit holders who do not have financial assurance meeting the requirements of LAC 33:VII.Chapter 13 shall submit financial assurance meeting the requirements of LAC 33:VII.Chapter 13 by January 1, 2012.

2. Standard Permit. Standard permits may be issued by the administrative authority to applicants for solid waste processing and/or disposal facilities that have successfully completed the standard permit application process for a site specific permit.

3. General Permit. General permits may be issued to facilities with operations that are similar in nature and shall provide conditions that each facility that is authorized to operate under the general permit shall follow. Issuance of a general permit shall follow the procedures of a standard permit regarding draft decisions, public notice, and final decisions.

4. Regulatory Permit. Regulatory permits may be issued by the administrative authority when it is determined to be appropriate considering the type of operations or facilities that would be covered. Regulatory permits shall be promulgated in accordance with the procedures provided in R.S. 30:2019.

5. Closure Permit. Closure permits may be issued to allow closure activities to occur in accordance with an approved closure plan.

6. All permits, regardless of type, issued on or after February 20, 1993, shall correspond to the facility categories set forth in LAC 33:VII.405.A (*Type I, Type I-A, Type II, Type II-A, and Type III*).

C. Existing Facilities Not Previously Classified or Not Presently Operating Under a Standard Permit

1. Only those existing facilities that the administrative authority classifies for upgrading may apply for a standard permit. The person notifying the Office of Environmental Services shall be issued a temporary permit and may continue operations in accordance with an interim operational plan, pending a decision on the standard permit application.

2. A facility classified for closure shall be issued a temporary permit. That permit may allow operations to continue in accordance with an interim operational plan until closure activities are accomplished and may require that closure and/or post-closure activities be conducted in accordance with an approved closure plan or permit.

D. Duration of Permit

1. Temporary permits are issued for a period not to exceed three years.

2. Standard, closure, and general permits issued to facilities other than landfills are issued for a period not to exceed 10 years, and may be issued for a period of less than 10 years.

a. Processing and/or disposal facilities with an effective standard permit shall submit to the Office of Environmental Services a new permit application, following the application process in LAC 33:VII.513 and 519, at least 365 calendar days before the expiration date of the standard permit, unless written permission for later filing is granted by the administrative authority. If the renewal application is submitted on or before the deadline above, and the administrative authority does not issue a final decision on the renewal application on or before the expiration date of the standard permit, the standard permit shall remain in effect until the administrative authority issues a final decision.

b. For permits with expiration dates greater than ten years, upon expiration, the department may, in accordance with rules and regulations, extend or reissue a permit for another time period of up to ten years, or up to 20 years for landfill facilities.

3. Standard permits for landfills may be issued for a time period not to exceed 20 years. The administrative authority may issue a permit for a landfill for a lesser time period when the administrative authority determines a lesser time period is warranted based on factors such as the applicant's compliance history, other non-compliance issues, or capacity.

E. Public Hearings

1. - 4. ...

5. Public Opportunity to Request a Hearing. Any person may, within 30 days after the date of publication of the draft decision in a newspaper notice (LAC 33:VII.513.G.3), request that the administrative authority consider whether a public hearing is necessary. If the administrative authority determines that the requests warrant it, a public hearing will be scheduled. If the administrative authority determines that the requests do not raise genuine and pertinent issues, the Office of Environmental Services

shall send the person(s) requesting the hearing written notification of the determination. The request for a hearing shall be in writing and shall contain the name and affiliation of the person making the request and the comments in support of or in objection to the issuance of a permit.

6. Public Notice of a Public Hearing. If the administrative authority determines that a hearing is necessary, notices shall be published at least 20 days before a fact-finding hearing in the official journal of the state and in a major local newspaper of general circulation in the area where the facility is located. The notice shall be published one time as a single classified advertisement in the legal or public notices section of a major local newspaper of general circulation in the area where the facility is located. If the affected area is in the same parish or area as the official journal of the state, a single classified advertisement in the official journal of the state shall be the only public notice required. Those persons on the Office of Environmental Services mailing list for hearings shall be mailed notice of the hearing at least 20 days before a public hearing. A notice shall also be published at least 20 days before a public hearing in the departmental bulletin, if available, or on the department's internet site in the public notices section.

7. Receipt of Comments Following a Public Hearing. Comments received by the Office of Environmental Services within 30 days after the date of a public hearing shall be reviewed by the Office of Environmental Services.

F. Other Requirements

1. The applicant may be required to obtain additional permits from other local state and federal agencies. Typical permits that may be needed include, but are not limited to, the following:

1.a. - 3. ...

G. Suspension, Revocation, Modification, or Termination of Permit. The administrative authority may review a permit at any time. After review of a permit, the administrative authority may, for cause, suspend, revoke, or modify a permit in whole or in part in accordance with the procedures outlined in the Administrative Procedure Act. If a permit holder requests termination of a permit, the administrative authority may terminate the permit with or without a review of the permit. Public notice is not required for termination of permits when the permit is terminated at the request of the permit holder.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2518, 2519 (November 2000), amended by the Office of Environmental Assessment, LR 30:2032 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2488 (October 2005), LR 33:1035 (June 2007), LR 33:2143 (October 2007). LR 37:

§513. Permit Process for Existing Facilities and for Proposed Facilities

A. Applicability. Solid waste permit applications and application processing shall be subject to the following requirements.

1. Permit holders who have been issued a final permit or modification prior to [INSERT DATE OF PROMULGATION], and have been issued an order to

commence prior to [INSERT DATE OF PROMULGATION] shall follow the existing permit or modification. Any changes requested to the existing permit shall follow the procedures outlined in Subsections B-K of this Section.

2.a. Permit holders who have been issued a final permit or modification prior to [INSERT DATE OF PROMULGATION], and have not been issued an order to commence prior to [INSERT DATE OF PROMULGATION] shall submit a construction certification (signed by a professional engineer, licensed in the state of Louisiana) after completion of any necessary construction or upgrades that the facility has been constructed or upgraded in accordance with the permit. Unless a longer time period is set by mutual agreement, within 15 working days of receipt of construction certification by the Office of Environmental Services, the administrative authority shall conduct a start-up inspection. Within 15 working days after a new or existing facility has undergone the initial start-up inspection, the administrative authority shall either issue an order authorizing commencement of operations or a written notice of deficiency to the permittee, unless a longer time period is set by mutual agreement.

b. Permit holders who have been issued an initial final permit prior to [INSERT DATE OF PROMULGATION] and have not been issued an order to commence prior to [INSERT DATE OF PROMULGATION] shall provide written confirmation from the appropriate municipal or parish governing authority where the facility will be located, dated within one hundred eighty (180) days prior to receiving an order to commence, indicating that the facility is or will be in compliance with all existing local zoning and land use restrictions.

3. Applicants for solid waste permits or major modifications who submitted an application prior to [INSERT DATE OF PROMULGATION] and have not yet been issued a final permit shall not be required to submit a new application form, unless required by the administrative authority. However, those applicants shall be required to comply with the requirements of LAC 33:VII.513.B.1 and 2.

4. All solid waste permit applications and modification applications submitted after [INSERT DATE OF PROMULGATION] shall follow the procedures of LAC 33:VII.513.B-K, as applicable.

B. Pre-Application Requirements. All prospective applicants for solid waste permits, except for those applicants exempted under Paragraphs 6-9 of this Subsection, shall comply with the following requirements prior to submitting an application for a solid waste permit.

1. The prospective applicant shall conduct a capacity evaluation regarding the need for the type of facility to be requested in the location proposed. This capacity evaluation shall include existing capacity within the proposed service area of the facility. The prospective applicant shall forward the results of the evaluation to the administrative authority for review. The administrative authority shall respond to the evaluation within 90 days of submittal and the response shall indicate the administrative authority's concurrence or non-concurrence.

2. The prospective applicant shall obtain written confirmation from the appropriate municipal or parish governing authority where the facility is proposed to be located indicating that the facility is or will be in compliance

with all existing local zoning and land use restrictions. The written confirmation may be submitted on a form provided in the application. The prospective applicant shall forward a copy of the written confirmation to the administrative authority for review. If the municipal or parish governing authority fails to provide to the applicant the requested written confirmation within 90 days of the request by the applicant, the applicant shall provide all information submitted to the municipal or parish governing authority regarding the request to the administrative authority and may submit the solid waste disposal waste application without the written confirmation. Failure to include the written confirmation with applications submitted after the 90 day time frame above shall not constitute grounds for the application to be deemed administratively incomplete in accordance with LAC 33:I.1505. The administrative authority shall request that the municipal or parish governing authority provide a response within 60 days. If the municipal or parish governing authority fails to provide a response to the department within the 60 days, the administrative authority shall consider the applicant in compliance with all existing local zoning and land use restrictions.

3. Pre-Application Public Notice

a. Prospective applicants shall publish a notice of intent to submit an application for a permit. This notice shall be published within 45 days prior to submission of the application to the Office of Environmental Services. This notice shall be published one time as a single classified advertisement in the legal or public notices section of the official journal of this state and a major local newspaper of general circulation. If the affected area is in the same parish or area as the official journal of the state, a single classified advertisement in the legal or public notices section of the official journal of the state will be the only public notice required.

b. The public notice shall be published in accordance with the form provided in LAC 33:VII.3001.Appendix A.

4. Post-Application Public Notice

a. All applicants shall publish a notice of application submittal within 45 days after submitting the application to the Office of Environmental Services. This public notice shall be published one time as a single classified advertisement in the legal or public notices section of the official journal of this state and a major local newspaper of general circulation. If the affected area is in the same parish or area as the official journal of the state, a single classified advertisement in the legal or public notices section of the official journal of the state will be the only public notice required.

b. The public notice shall be published in accordance with the form provided in LAC 33:VII.3003.Appendix B.

5. All prospective applicants are encouraged to meet with representatives of the Waste Permits Division prior to the preparation of a solid waste permit application to inform the department of the plans for the facility.

6. Applicants who are Type I only and who also do not propose to accept waste from off-site, other than off-site waste from affiliated persons, such as the applicant or any person controlling, controlled by, or under common control

with, the applicant, are exempt from the requirements of Paragraphs 1-2 of this Subsection.

7. Applicants for renewal or major modification of an existing permit are exempt from the requirements of Paragraphs 1-2 of this Subsection, provided that the application does not include changes that would constitute a physical expansion of the area(s) in which solid wastes are disposed beyond the facility's existing boundaries as set forth in the facility's existing permit.

8. Minor modification requests are exempt from Paragraphs 1-5 of this Subsection.

9. Applicants whose types are only either I-A or II-A or I-A and II-A are exempt from the requirements of Paragraphs 1 and 2 of this Subsection.

C. Permit Application Requirements

1. Any person who generates, transports, or stores solid waste, and is not issued a permit, but is under the jurisdiction of the department, shall comply with the applicable provisions of these regulations.

2. Submittal of Permit Applications

a. Any applicant for a standard permit for existing or proposed processing or disposal facilities shall complete all parts of a permit application as described in LAC 33:VII.519, and submit three paper copies to the Office of Environmental Services. All applicants shall also submit three electronic copies of the application, on compact discs, with the submittal of the paper copies. All attachments shall be marked with appropriate tabs. In lieu of submitting three paper and electronic copies of the permit application, the applicant may submit the permit application electronically via the internet when the department's internet site allows for such submittals.

b. Any applicant seeking to be included for authorization under a general permit shall follow the application/notice of intent provisions specified in the general permit.

c. Any applicant for a closure permit shall file an application for a closure permit. The closure permit application shall provide the information specified in LAC 33:VII.515.

d. Each application for which a permit application fee is prescribed shall be accompanied by a remittance in the full amount of the appropriate permit application review fee. No application shall be accepted or processed prior to payment of the full amount specified.

e. A completed separate standard permit application for each existing facility shall be submitted to the Office of Environmental Services within 180 days after issuance of a temporary permit.

f. All applications submitted shall be available for public review via the department's electronic document management system as soon as practicable, subject to the confidentiality provisions of LAC 33:I.Chapter 5.

D. Notices to Parish Governing Authorities. As provided in R.S. 30:2022, upon receipt of a permit application the Office of Environmental Services shall provide written notice on the subject matter to the parish governing authority, which shall promptly notify each parish municipality affected by the application.

E. Permit Application Review and Evaluation

1. LAC 33:VII.Chapters 5, 7, 8, 13 and 15 establish the evaluation criteria used by the administrative authority.

2. - 3. ...

F. Standard Permit Applications Deemed Unacceptable or Deficient

1. - 2. ...

3. The supplementary information as referenced in Paragraph F.2 of this Section shall address all deficiencies and/or show significant progression in addressing all outstanding deficiencies, or the application may be denied.

G. Draft Permit Decision

1. Once an application is deemed technically complete, the administrative authority shall prepare a draft permit decision to issue or deny the requested permit. If a draft permit is prepared, the draft permit shall contain the following information:

a. all conditions proposed for a final permit under LAC 33:VII.Subpart 1; and

b. any compliance schedules proposed for the facility.

2. Fact Sheet. For all draft permit decisions, including draft denials, the administrative authority shall prepare a fact sheet describing the department's reasoning for the issuance of the draft permit decision. The fact sheet shall contain:

a. a brief description of the facility and the activity which is the subject of the draft permit decision;

b. the type and quantity of wastes which are proposed to be or are being processed or disposed;

c. a brief summary of the justification for the draft permit conditions (not applicable to draft denials), including references to any applicable statutes or regulations;

d. a description of the procedures for reaching a final decision including:

i. a description of the public comment period under LAC 33:VII.513.G.3 and the address where comments will be received; and

ii. procedures for requesting a hearing;

e. the name and telephone number of a person to contact for additional information; and

f. any additional information, as necessary.

3. Public Notice. The Office of Environmental Services shall publish a notice of the draft permit decision one time as a single classified advertisement in the legal or public notices section of the official journal of the state and one time as a classified advertisement in the legal or public notices section of a major local newspaper of general circulation in the affected area. If the affected area is in the same parish or area as the official journal of the state, a single classified advertisement in the official journal of the state shall be the only public notice required. The public notices shall solicit comment from interested individuals and groups. Comments received by the administrative authority within the timeframe specified in the public notice shall be reviewed by the Office of Environmental Services prior to the preparation of a final decision. The costs of publication shall be borne by the applicant. The applicant shall furnish the contact information (including name and/or title, address, and telephone number) for the person who shall be responsible for receiving the invoice from the newspaper(s). Proof of payment for the public notice shall be provided to the administrative authority if requested.

4. A copy of the draft permit decision shall be sent to the parish library in the parish where the facility is located for public review.

5. A copy of the draft permit decision shall be sent to the appropriate regional office and shall be made available for public review.

6. Closure permits based on closure plans or applications, if not received as part of a permit application for a standard permit, shall not follow the draft permit decision process. Once a closure plan or application is deemed adequate, the administrative authority shall issue a closure permit.

H. Issuance of a Final Permit Decision

1. The administrative authority shall issue a standard permit or a general permit, or shall issue a standard permit denial, including reasons for the denial, after the public notice period specified in Paragraph G.3 of this Section has ended.

2. A closure permit may be issued to allow closure activities to be accomplished at a facility that has been issued a standard permit denial but has previously accepted waste under a prior permit or an order.

3. The administrative authority may issue authorization to operate under the conditions of a general permit in lieu of a standard permit, provided the applicant meets the requirements to operate under the general permit.

I. Public Notice of Final Permit Decision for Standard or General Permit. No later than 20 days following the issuance of a final permit decision for a standard or general permit the administrative authority shall publish a notice of the final permit decision on the department's internet site, in the public notices section. This does not apply to authorizations to operate under a general or regulatory permit. No mailout will be sent, except to those persons who commented on the draft permit decision and to those persons who have requested to be provided written notice.

J. As a permit condition, the department shall establish a time frame for the facility to submit any necessary construction certifications required by the administrative authority.

K. All necessary construction shall begin within 18 months of the effective date of the permit, unless a longer term is specified in the permit. If a permittee fails to begin construction within the 18 month period or as otherwise specified in the permit, the permittee shall repeat performance of the requirements listed in Subsection B (pre-application requirements) of this Section. The performance of these requirements shall be repeated by the permittee every 18 months until construction begins.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2519 (November 2000), amended by the Office of Environmental Assessment, LR 30:2032 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2488 (October 2005), LR 33:1037 (June 2007), LR 33:2143 (October 2007), LR 37:

Subchapter C. Permit System for Facilities Classified for Upgrade or Closure

§515. Permit Process for Existing Facilities Classified for Closure

A. ...

B. Submittal of Closure Plans

1. Permit holders for facilities classified for closure shall submit to the Office of Environmental Services three paper copies and three electronic copies on compact discs, of a closure plan within 60 days after issuance of the temporary permit for the facility. All attachments shall be marked with appropriate tabs.

2. The following Sections of the regulations shall be addressed and incorporated in the closure plan for all solid waste processing and disposal facilities. All responses and exhibits shall be identified in the following sequence to facilitate the evaluation. All applicable Sections of LAC 33:VII.Chapters 5, 7, and 8 shall be addressed and incorporated into the closure plan:

a. LAC 33:VII.519.B;

b. - c. ...

d. those portions of LAC 33:VII.Chapter 7 pertaining to facility characteristics;

e. LAC 33:VII.519.B.2, Facility Surface Hydrology;

f. LAC 33:VII.801.A, General Facility Geology (only required for Type I and II facilities that have not undergone clean closure);

g. LAC 33:VII.803, Subsurface Characterization (only required for Type I and II facilities that have not undergone clean closure);

h. LAC 33:VII.519.B.10, Facility Groundwater Monitoring (only required for Type I and II facilities that have not undergone clean closure);

i. LAC 33:VII.519.B.3, Facility Plans and Specifications (only required for Type I and II facilities with on-site closure and with a potential to produce gases);

j. the types (including chemical and physical characteristics) and sources of waste processed or disposed of at the facility;

k. LAC 33:VII.519.B.6, Facility Closure;

l. LAC 33:VII.519.B.7.a, Facility Post-Closure;

m. LAC 33:VII.519.B.7.b, Facility Post-Closure (only required for Type I and II facilities that have not undergone clean closure);

n. the name of the person who currently owns the land;

o. LAC 33:VII.519.B.8, Financial Responsibility; and

p. a detailed implementation schedule for closure of the facility with built-in flexibility to coincide with the date of approval of the closure plan.

3. ...

C. Closure Plans Determined Unacceptable or Deficient

1. - 2. ...

D. Closure Plans Deemed Technically Complete. Closure plans that have been deemed technically complete shall be approved by issuance of a closure permit. The facility shall comply with the closure permit for all closure activities performed for closing the facility. If the facility received approval of a closure plan prior to [INSERT DATE OF

PROMULGATION], the facility shall comply with the approved closure plan.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2520 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2489 (October 2005), LR 33:1038 (June 2007), LR 33:2144 (October 2007), LR 37:

§517. Modifications of Permits and Other

Authorizations to Operate

A. Modification Requests

1. The permit holder shall submit a permit modification request to the Office of Environmental Services, for any changes in a facility or deviation from a permit. All permit modification requests shall detail the proposed modifications and shall include an assessment of the effects of the modification on the environment and/or the operation. Modification details shall include, but not be limited to, a summary detailing the modification request and all appropriate drawings, narratives, etc., which shall illustrate and describe the originally-permitted representations and the proposed modifications thereto. New language requested in the permit narrative and existing language requested to be deleted from the permit shall be identified therein.

a. Modification requests shall be submitted using the appropriate permit application form. Only those sections that are proposed for modification shall be completed. The administrative authority may request further information so that a proper determination may be made. Three paper copies of all modification requests shall be provided to the Office of Environmental Services. All applicants shall also submit three electronic copies of the application, on compact discs, with the submittal of the paper copies. The modification request shall incorporate, in the appropriate sections, all required plans and narratives and shall include appropriate tabbing, if applicable, for all attachments. Facilities seeking to modify their permit to include changes that constitute a physical expansion of the area(s) in which solid wastes are disposed beyond the facility's existing boundaries as set forth in the facility's existing permit shall follow the pre-application requirements listed at LAC 33:VII.513.B.

b. ...

2. All proposed changes in ownership shall comply with the provisions specified in LAC 33:I.Chapter 19.

3. All major modification requests shall address the additional supplemental information required pursuant to LAC 33:VII.519.B.9 in relation to the proposed permit modification activity.

B. Public Notice of Modifications

1. Major modifications require public notice after a draft permit decision is prepared. Modifications to a permit that require public notice include, but are not limited to, the following:

a. - d. ...

e. an extension of the operating hours or days of operation;

f. a change to the facility that may have an impact on traffic patterns;

g. a reduction in the number of groundwater sampling parameters or the number of groundwater monitoring wells;

h. a lateral or vertical expansion of the permitted area(s) for waste disposal, except for vertical expansion that would result in no net increase of in-place volume; or

i. other changes in the permit that tend to make the permit requirements less stringent.

2. Once a permit modification that requires public notice has been determined by the Office of Environmental Services to be technically complete, the department shall prepare a draft permit decision following the procedures of LAC 33:VII.513.G.

3. Mandatory modifications are considered to be enhancements and will require neither public notice nor public hearing.

C. No modification shall be instituted without the written approval of the administrative authority as follows.

1. For major modifications, the administrative authority shall issue a final permit decision after the public notice period required in LAC 33:VII.517.B.2. Final permit decisions shall follow the procedures outlined in LAC 33:VII.513.H and I.

2. For minor modifications, the administrative authority shall issue a final permit decision after review of the requested modification.

D. Operation of a modified construction feature or unit of a standard permitted facility may commence after the provisions of LAC 33:VII.407.C are met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2014.2.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of the Secretary, LR 25:661 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2520 (November 2000), amended by the Office of Environmental Assessment, LR 30:2033 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2430, 2490 (October 2005), LR 33:1039 (June 2007), LR 33:2145 (October 2007), LR 37:

Subchapter D. Permit Application

§519. Permit Application Form(s)

A. The applicant shall complete a standardized permit application Form obtained from the Office of Environmental Services or the department's website. The form(s) to be used is based on the type of facility for which the applicant is applying. If the application is for multiple facility types or unit types, the applicant shall combine the application forms into one application with common attachments. The application shall be completed following the information provided in the application guidance document, if applicable. Application form requirements shall be based on all Sections of LAC 33:VII as applicable to the specific type of application.

B. Application Contents

1. General Facility Information. The following information is required from all applicants:

- a. the name of the applicant (prospective permit holder) applying for a permit;
- b. the facility name;

c. a description of the location of the facility (identify by street and number or by intersection of roads, or by mileage and direction from an intersection);

d. the geographic location (section, township, range, and parish where the facility is located, and the coordinates, as defined by the longitude and latitude to the second) of the centerpoint of the facility;

e. the mailing address of the applicant;

f. the contact person for the applicant (the position or title of the contact person is acceptable);

g. the telephone number of the contact person;

h. the type and purpose of the operation (check each applicable box);

i. the status of the facility (if leased, state the number of years of the lease and provide a copy of the lease agreement);

j. the operational status of the facility;

k. the total site acreage and the amount of acreage that will be used for processing and/or disposal;

l. a list of all environmental permits that relate directly to the facility represented in this application, including:

i. those permits which the applicant has been issued with dates of issuance; and

ii. those permits for which the applicant has applied or intends to apply;

m. the zoning of the facility that exists at the time of the submittal of the permit application. (Note the zone classification and zoning authority, and include documentation stating that the proposed use does not violate existing land-use requirements. Written confirmation required by LAC 33:VII.513.B.2 shall be sufficient to satisfy the documentation requirement.);

n. the types of waste to be processed or disposed by the facility, maximum quantities (wet tons/week and wet tons/year) of waste to be processed or disposed by the facility, and sources of waste to be processed or disposed by the facility. The applicant shall provide a breakdown (by percent) of the following:

i. all waste processed or disposed that was generated on-site;

ii. all waste processed or disposed that was received from off-site sources located within Louisiana; and

iii. all waste processed or disposed that was received from off-site sources located outside of Louisiana;

o. the specific geographic area(s) to be serviced by the solid waste facility;

p. proof of publication of the notice regarding the submittal of the permit application as required in LAC 33:VII.513.B.3;

q. the signature, typed name, and title of the *responsible official* as defined in LAC 33:VII.115 authorized to sign the application;

r. proof of notification to the nearest airport and the Federal Aviation Administration; and

s. for previously permitted facilities, a brief history of the permit actions that have occurred at the site, including permits, modifications, and closure activities.

2. The following information regarding facility surface hydrology is required for all facilities:

- a. a description of the method to be used to prevent surface drainage through the operating areas of the facility;
- b. a description of the facility runoff/run-on collection system;
- c. the rainfall amount from a 24-hour/25-year storm event;
- d. the location of aquifer recharge areas in the site or within 1,000 feet of the site perimeter, along with a description of the measures planned to protect those areas from the adverse impact of operations at the facility; and
- e. if the facility is located in a flood plain, a plan to ensure that the facility does not restrict the flow of the 100-year base flood or significantly reduce the temporary water-storage capacity of the flood plain, and documentation indicating that the design of the facility is such that the flooding does not affect the integrity of the facility or result in the washout of solid waste.

3. The following information regarding facility plans and specifications is required for all facilities, unless otherwise indicated:

a. Certification. The person who prepared the permit application shall provide the following certification:

"I certify under penalty of law that I have personally examined and I am familiar with the information submitted in this permit application and that the facility as described in this permit application meets the requirements of LAC 33:VII.Subpart 1. I am aware that there are significant penalties for knowingly submitting false information, including the possibility of fine and imprisonment."

b. Geotechnical field tests and laboratory tests shall be conducted in compliance with LAC 33:I.Subpart 3 and according to the standards of the American Society for Testing and Materials (ASTM) or the EPA or other applicable standards approved by the administrative authority. The results of these tests may be used for modeling and analysis purposes.

c. The following information is required for Type I and II facilities only:

- i. detailed plan-view drawings showing original contours, proposed elevations of the base of units prior to installation of the liner system, and proposed final contours (e.g., maximum height);

- ii. detailed drawings of slopes, levees, and other pertinent features;

- iii. the type of material and its source for levee construction. Calculations shall be performed to indicate the volume of material required for levee construction;

- iv. representative cross sections showing original and final grades, drainage, the location and type of liner, and other pertinent information;

- v. a description of the liner system, which shall include calculations of anticipated leachate volumes, rationales for particular designs of such systems, and drawings; and

- vi. a description of the leachate collection and removal system, which shall include calculations of anticipated leachate volumes, rationales for particular designs of such systems, and drawings.

d. The following information is required for Type I, II, and III landfills only:

- i. approximate dimensions of daily fill and cover; and

- ii. the type of cover material and its source for daily, interim, and final cover. Calculations shall be

performed to indicate the volume of material required for daily, interim, and final cover.

4. The following information regarding facility administrative procedures is required for all facilities as indicated.

a. The following information is required for all facilities:

- i. a description of the recordkeeping system, including types of records to be kept, and the use of records by management to control operations as required;

- ii. an estimate of the minimum personnel, listed by general job classification, required to operate the facility;

- iii. the maximum days of operation per week and hours per facility operating day (maximum hours of operation within a 24-hour period); and

- iv. an annual report submitted to the administrative authority.

b. Type II and Type III facilities shall include the number of certified facility operators determined and certified by the Louisiana Solid Waste Operator Certification and Training Program Board (R.S. 37:3151 et seq. and LAC 46:Part XXIII).

5. The following information regarding facility operational plans is required for all facilities as indicated.

a. The following information is required for all facilities:

- i. types of waste (including chemical, physical, and biological characteristics of industrial wastes generated on-site), maximum quantities of wastes per year, and sources of waste to be processed or disposed of at the facility;

- ii. waste-handling procedures from entry to final disposition, which could include shipment of recovered materials to a user;

- iii. minimum equipment to be furnished at the facility;

- iv. plan to segregate wastes, if applicable;

- v. procedures planned in case of breakdowns, inclement weather, and other abnormal conditions (including detailed plans for wet-weather access and operations);

- vi. procedures, equipment, and contingency plans for protecting employees and the general public from accidents, fires, explosions, etc., and provisions for emergency response and care, should an accident occur (including proximity to a hospital, fire and emergency services, and training programs); and

- vii. provisions for controlling vectors, dust, litter, and odors.

- viii. a comprehensive operational plan describing the total operation, including but not limited to, inspection of incoming waste to ensure that only permitted wastes are accepted (Type II landfills shall provide a plan for random inspection of incoming waste loads to ensure that hazardous wastes or Toxic Substances Control Act (TSCA) regulated PCB wastes are not disposed of in the facility.); traffic control; support facilities; equipment operation; personnel involvement; and day-to-day activities. A quality-assurance/quality-control (QA/QC) plan shall be provided for facilities receiving industrial waste; domestic-sewage sludge; incinerator ash; asbestos-containing waste; nonhazardous petroleum-contaminated media; and debris generated from underground storage tanks (UST), corrective action, or other special wastes as determined by the

administrative authority. The QA/QC plan shall include, but shall not be limited to, the necessary methodologies; analytical personnel; preacceptance and delivery restrictions; handling procedures; and appropriate responsibilities of the generator, transporter, processor, and disposer. The QA/QC plan shall ensure that only permitted, nonhazardous wastes are accepted;

ix. salvaging procedures and control, if applicable;
x. scavenging control; and
xi. a comprehensive air monitoring plan for facilities receiving waste with a potential to produce methane gases.

b. The following information is required for Type I and II landfills only.

i. Items to be submitted, regardless of land use, include:

(a). a detailed analysis of waste, including but not limited to, pH, phosphorus, nitrogen, potassium, sodium, calcium, magnesium, sodium-adsorption ratio, and total metals (as listed in LAC 33:VII.715.D.3.b);

(b). soil classification, cation-exchange capacity, organic matter, content in soil, soil pH, nitrogen, phosphorus, metals (as listed in LAC 33:VII.715.D.3.b), salts, sodium, calcium, magnesium, sodium-adsorption ratio, and PCB concentrations of the treatment zone; and

(c). annual application rate (dry tons per acre) and weekly hydraulic loading (inches per acre).

ii. Items to be submitted in order for landfills to be used for food-chain cropland include:

(a). a description of the pathogen-reduction method for septage, domestic sewage sludges, and other sludges subject to pathogen production;

(b). crops to be grown and the dates for planting;

(c). PCB concentrations in waste;

(d). annual application rates of cadmium and PCBs; and

(e). cumulative applications of cadmium and PCBs.

iii. Items to be submitted for landfills to be used for non-food-chain purposes include:

(a). a description of the pathogen-reduction method in septage, domestic sewage sludges, and other sludges subject to pathogen production; and

(b). a description of control of public and livestock access.

c. The following information is required for Type I-A and II-A incinerator waste-handling facilities and refuse-derived energy facilities only:

i. a description of the method used to handle process waters and other water discharges that are subject to NPDES/LPDES permit and state water discharge permit requirements and regulations; and

ii. a plan for the disposal and periodic testing of ash. (All ash and residue shall be disposed of in a permitted facility).

d. The following information is required for Type I-A and II-A refuse-derived fuel facilities and Type III separation and composting facilities only:

i. a description of the testing to be performed on the fuel or compost; and

ii. a description of the uses for and the types of fuel/compost to be produced.

e. Type I-A and II-A refuse-derived fuel facilities and Type III separation and composting facilities shall include a description of marketing procedures and control.

6. The following information regarding facility closure is required for all facilities as indicated.

a. The closure plan for all facilities shall include the following:

i. the date of final closure;

ii. the method to be used and steps necessary for closing the facility; and

iii. an itemized cost of closure of the facility, based on the estimated cost of hiring a third party to close the facility at the point in the facility's operating life when the extent and manner of its operation would make closure the most expensive.

b. The closure plan for all Type I and II landfills and surface impoundments shall include the following:

i. a description of the final cover and the methods and procedures used to install the cover;

ii. an estimate of the largest area of the facility ever requiring a final cover at any time during the active life;

iii. an estimate of the maximum inventory of solid waste ever on-site over the active life of the facility;

iv. a schedule for completing all activities necessary for closure.

c. The closure plan for all Type I and II facilities and Type III woodwaste and construction/demolition debris facilities shall include the following:

i. the sequence of final closure of each unit of the facility, as applicable;

ii. a drawing showing final contours of the facility; and

iii. a copy of the document that will be filed upon closure of the facility with the official parish recordkeeper indicating the location and use of the property for solid waste disposal, unless the closure plan specifies a clean closure.

7. The following information regarding facility post-closure is required for all facilities as indicated.

a. The post-closure plan for all facilities shall include the following:

i. discussion of the long-term use of the facility after closure, as anticipated; and

ii. an itemized cost of conducting post-closure of the facility, based on the estimated cost of hiring a third party to conduct post-closure activities in accordance with the closure plan.

b. The post-closure plan for Type I and II facilities shall include the following:

i. the method for conducting post-closure activities, including a description of the monitoring and maintenance activities and the frequency at which they will be performed;

ii. the method for abandonment of monitoring systems, leachate collection systems, gas-collection systems, etc.;

iii. measures planned to ensure public safety, including access control and gas control; and

iv. a description of the planned uses of the facility during the post-closure period.

8. Documentation of financial responsibility meeting the requirements of LAC 33:VII.Chapter 13 shall be

included for all facilities. The following shall be included in the documentation:

a. the name and address of the person who currently owns the land and the name and address of the person who will own the land if the permit is granted (if different from the permit holder, provide a copy of the lease or document which evidences the permit holder's authority to occupy the property); or

b. the name of the agency or other public body that is requesting the permit, or if the agency is a public corporation, its published annual report, or if otherwise, the names of the principal owners, stockholders, general partners, or officers;

c. existing facilities shall provide evidence of a financial assurance mechanism for closure and/or post-closure care and corrective action for known releases when needed. Proposed facilities shall acknowledge they will be required to obtain financial assurance in accordance with LAC 33:VII.1303.A.2.

9. Information regarding facility site assessments is required for all facilities as indicated.

a. The following information is required for all solid waste processing and disposal facilities. All responses and exhibits shall be identified in the following sequence to facilitate the evaluation:

i. a discussion demonstrating that the potential and real adverse environmental effects of the facility have been avoided to the maximum extent possible;

ii. a cost-benefit analysis demonstrating that the social and economic benefits of the facility outweigh the environmental-impact costs;

iii. a discussion and description of possible alternative projects that would offer more protection to the environment without unduly curtailing nonenvironmental benefits;

iv. a discussion of possible alternative sites that would offer more protection to the environment without unduly curtailing nonenvironmental benefits; and

v. a discussion and description of the mitigating measures which would offer more protection to the environment than the facility, as proposed, without unduly curtailing nonenvironmental benefits.

b. An application for renewal or extension of an existing permit shall not be subject to submittal of the information required in LAC 33:VII.519.B.9.a, unless said renewal or extension encompasses changes that would constitute a major modification.

c. An application for a minor modification of an existing permit shall not be subject to submittal of the information required in LAC 33:VII.519.B.9.a.

10. The following facility groundwater monitoring information is required for all Type I and II facilities only:

a. a designation of each zone that will be monitored;

b. a map for each groundwater monitoring zone that depicts the locations of all monitoring wells (including proposed monitoring wells) that are screened in a particular zone and each zone's relevant point of compliance, along with information that demonstrates that monitoring wells meet the standards in LAC 33:VII.805.A.1 and 2. For proposed monitoring wells, the response to this requirement shall provide an implementation schedule for submitting a

revised well location map showing all existing and proposed monitoring wells that are screened in each particular zone;

c. a geologic cross section along the perimeter of the facility showing screen intervals for existing and proposed monitoring wells, along with other applicable information required in LAC 33:VII.803.C.2.a. For proposed monitoring wells, the response to this requirement shall include an implementation schedule for revising applicable geologic cross sections to include the screen interval of the newly installed monitoring wells and other applicable information required in LAC 33:VII.803.C.2.a;

d. a designation of each monitoring well (including any proposed monitoring wells) as either "background" or "down gradient," for each zone that will be monitored;

e. a table displaying pertinent well construction details for each monitoring well, including the elevation of the reference point for measuring water levels to the National Geodetic Vertical Datum (NGVD), the elevation of the ground surface (NGVD), the drilled depth (in feet), the depth to which the well is cased (in feet), the depth to the top and bottom of the bentonite seal (in feet), the depth to the top and bottom of the screen (in feet), the slot size, the casing size, and the type of grout; and as-built diagrams (cross sections) of each well providing the aforementioned well construction details. For proposed monitoring wells, the response to this requirement shall provide an implementation schedule for submitting the information specified in this requirement;

f. a demonstration that the monitoring wells are constructed according to the standards in LAC 33:VII.805.A.3. For proposed monitoring wells, the response to this requirement shall provide an implementation schedule for submitting the information specified in this requirement;

g. for an existing facility, all background data and at least three years of detection monitoring data from monitoring wells in place at the time of the permit application. If this data exists in the department records, the administrative authority may allow references to the data in the permit application. For an existing facility with no wells, groundwater data shall be submitted within 90 days after the installation of monitoring wells. For a new facility or expansion, groundwater data (one sampling event) shall be submitted before waste is accepted;

h. a sampling and analysis plan that meets the standards in LAC 33:VII.805.B and includes a table that specifies each parameter, analytical method, practical quantitation limit, and Chemical Abstracts Service registry number (CAS RN); and

i. a plan for detecting, reporting, and verifying changes in groundwater.

C. In addition to the specific requirements listed in LAC 33:VII.519.B, the applicant is required to provide all information specified in the specific permit application(s) for the type(s) of facilities for which the applicant is applying. These specific application requirements are based on the technical requirements found in LAC 33:VII.Chapters 7 and 8 and will be specific to the type of application being completed.

D. Incomplete applications will not be accepted for review. When the administrative authority determines an application is incomplete, it shall notify the applicant. If the applicant elects to continue with the permit application

process, the applicant shall follow the requirements provided in the notice. These requirements may include submitting additional information in the form of an application addendum or submitting an entirely new application.

E. All applicants for solid waste permits shall comply with the requirements of LAC 33:1.1701.

F. All applicants shall submit the appropriate application fee as determined by LAC 33:VII.Chapter 15 at the time of application submittal. Any application submitted without the appropriate fee will be determined incomplete and shall not be processed until the fee is remitted.

G. The applicant shall submit any additional information determined necessary by the administrative authority for a proper determination or decision regarding the application, including information determined necessary to prepare a draft or final permit decision. This may include additional information for special processes or systems and for supplementary environmental analysis.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of the Secretary, Legal Affairs Division, LR 33:1040 (June 2007), LR 33:2145 (October 2007), LR 37:

§520. Compliance Information

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2014.2.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 25:661 (April 1999), repromulgated by the Office of the Secretary, Legal Affairs Division, LR 33:1040 (June 2007), repealed LR 37:

§521. Part II: Supplementary Information, All Processing and Disposal Facilities

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 19:1143 (September 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2521 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:1040 (June 2007), repealed LR 37:

§522. General Facility Geology, Subsurface Characterization, and Facility Groundwater Monitoring

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:1044 (June 2007), repealed LR 37:

§523. Part III: Additional Supplementary Information

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of Waste Services, Solid Waste Division, LR 23:1685 (December 1997), amended by the Office of the Secretary, Legal Affairs Division, LR 33:1044 (June 2007), repealed LR 37:

Subchapter E. Permit Requirements

§525. Certification of Compliance

A. All permitted facilities shall submit an annual certification of compliance by October 1 of each year covering the period of July 1 to June 30 immediately preceding the October 1 submittal date. This certification shall be submitted to the Office of Environmental Compliance, Surveillance Division. A form for Part I of the certification can be obtained from the Office of Environmental Compliance, however, Part II of the certification will be site specific and will set forth the site specific conditions that shall be certified in compliance with the permit. At a minimum, in addition to the requirements listed in Subsections B, C, and D of this Section, all certifications shall contain:

1. the name of the permit holder;
2. the address of the permitted facility;
3. the permit number for the facility;
4. the site identification number of the facility;
5. the agency interest identification number of the facility;
6. the name, title, address, and contact telephone number for the billing contact for the facility; and
7. any necessary calculations or conversion factors used for the certification.

B. The certification shall identify each deviation from specific permit conditions that require annual certification occurring during the reporting period and steps taken by the permit holder to return to permit conditions, as well as steps taken to insure deviations of a similar type are prevented in the future. Deviations may or may not constitute a violation of the Louisiana Environmental Quality Act or the solid waste regulations. Facilities with groundwater monitoring programs shall also identify any deviations or exceedances pertaining to the solid waste groundwater monitoring program as well as proposed remedial actions to achieve and maintain compliance with the facility's solid waste permit.

C. All certification forms shall contain the following certification of truth, accuracy, and completeness: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision according to a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations." This certification shall be signed by a responsible official.

D. All permitted facilities shall provide and certify the following information annually and shall provide the methods used for determining compliance (e.g., monitoring, recordkeeping and reporting, etc.):

1. the types and quantities, in wet tons, of solid waste generated, including waste generated but sent off-site for disposal. Landfarm facilities shall report in dry and wet tons;
2. the types and quantities, in wet tons, of solid waste processed, including waste generated on-site and off-site, indicating percentage of each. For waste generated off-site, indicate whether the waste was generated in-state or out-of-state. Landfarm facilities shall report in dry and wet tons;

3. the types and quantities, in wet tons, of solid waste disposed, including waste generated on-site and off-site, indicating percentage of each. For waste generated off-site, indicate whether the waste was generated in-state or out-of-state. Landfarm facilities shall report in dry and wet tons;

4. the permitted capacity in cubic yards and wet tons;
5. the remaining capacity in cubic yards and wet tons;
6. the capacity used in the reporting period in cubic yards and wet tons;

7. the estimated remaining capacity in months and years;

8. the types and quantities (in wet tons and dry tons) of materials sent off-site for reuse and/or recycling, including the end use of the material;

9. for incinerator waste-handling facilities, shredders, balers, compactors, and transfer stations, the types and quantities of solid waste transported for disposal, in wet tons;

10. the facility has complied with the requirements of the Solid Waste Worker Certification program, if applicable;

11. the facility has paid all fees due to the department. If an invoice is in dispute, include a statement pertaining to the dispute;

12. any specific item required to be certified annually as listed in the permit;

13. for landfill facilities, the permitted total height of the landfill, including all cover materials;

14. for landfill facilities, the current height of the landfill, including all cover. The method of measurement shall be included in the certification, as well as the date the measurement was taken;

15. for air curtain destructors, identify the site and quantity of solid waste processed at each individual site;

16. the facility name, city, and state of the ultimate disposal site for any waste sent off-site for disposal;

17. the facility has updated all financial assurance estimates; and

18. the facility has updated, if required, its financial assurance mechanism.

E. In addition to those items listed in Subsection D of this Section, those permit holders who received their permit prior to [INSERT DATE OF PROMULGATION] shall also certify the following:

1. all reports required by the permit or regulations have been submitted as required; and

2. monitoring requirements have been met.

F. Permit holders who are issued a major modification after [INSERT DATE OF PROMULGATION] shall submit the annual compliance certification as specified in Subsection D of this Section and in the modified permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2154.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 37:

§527. Construction Schedules

A. Final permits may allow or require the construction or upgrade of permitted units. If a permit allows or requires the construction or upgrading of a unit that is (or will be) directly involved in the processing or disposal of solid waste, the facility shall submit reports, on a schedule specified in the permit, describing the completed and current activities at the site from the beginning of the construction

period until the construction certification required by LAC 33:VII.407.C is submitted to the Office of Environmental Services. The reports shall be submitted to the Waste Permits Division and the appropriate LDEQ Regional Office. These reports shall include, at a minimum, the following information:

1. a summary of construction activities to date;
2. the percentage of work completed to date;
3. the current status of the work;
4. details regarding the work scheduled to occur in the next reporting period;

5. details of the work successfully completed since the last report;

6. weather conditions for the reporting period and impacts, if any;

7. details regarding any quality control or quality assurance problems encountered; and

8. any additional information requested by the administrative authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2154.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 37:

§529. Conditions Applicable to All Permitted Facilities

A. The following conditions apply to all solid waste permits.

1. The permit holder shall comply with all conditions of a permit except that the permit holder need not comply with the conditions of a permit to the extent and for the duration such noncompliance is authorized in an emergency permit or order. Any permit noncompliance constitutes a violation of the Act and any amendments to the Act, and is grounds for enforcement action, permit suspension, revocation or modification, or denial of a permit renewal application.

2. It shall not be a defense for a permit holder in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of a permit.

3. The permit holder shall take all necessary steps to minimize and/or correct any adverse impact on the environment resulting from noncompliance with a permit.

4. The permit holder shall at all times properly operate and maintain all facilities and systems which are installed or used by the permit holder to achieve compliance with the conditions of a permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of a permit.

5. The filing of a request by the permit holder for a permit modification, termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

6. A permit does not convey any property rights of any sort, or any exclusive privilege.

7. The permit holder shall furnish to the administrative authority, within a reasonable time, any information which may be requested to determine whether cause exists for modifying, revoking, suspending or

terminating an effective permit, or to determine compliance with an effective permit. The permit holder shall also furnish, upon request, copies of records required to be kept by a permit.

8. The permit holder shall allow the administrative authority, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

a. enter upon the permit holder's premises where a regulated facility or activity is located or conducted, or where records shall be kept under the conditions of its permit;

b. have access to and copy, at reasonable times, any records that shall be kept under the conditions of its permit;

c. inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under its permit; and

d. sample or monitor at reasonable times, for the purposes of assuring permit compliance, any substances or parameters at any location.

9. The permit holder shall report any fire, explosion, unplanned sudden or non-sudden release to air, soil, or surface which may endanger health or the environment as required by the "Notification Regulations and Procedures for Unauthorized Discharges" (see LAC 33:I.Chapter 39).

10. If the permit holder determines that incorrect or incomplete information was submitted in a permit application or in any report to the administrative authority, the permit holder shall promptly submit such facts or information to the Office of Environmental Services.

11. A permit issued under these regulations does not authorize non-compliance with any other federal, state, or local regulation, law, or statute.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2154.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 37:

Chapter 7. Solid Waste Standards

Subchapter A. Landfills, Surface Impoundments, Landfarms

§709. Standards Governing Type I and II Solid Waste Disposal Facilities

A. Location Characteristics. The information on location characteristics listed in this Subsection is required and shall be provided for all Type I and II solid waste disposal facilities.

1. - 11. ...

B. Facility Characteristics. The following facility characteristics are required for Type I and II solid waste facilities.

1. - 2.d. ...

3. Buffer Zones

a. Buffer zones of not less than 200 feet shall be provided between the facility and the property line. Buffer zones of not less than 300 feet shall be provided between the facility and the property line when the property line is adjacent to a structure currently being used as a church and having been used as a church prior to the submittal of a permit application. The requirement for a 300 feet buffer zone between the facility and a church shall not apply to any

landfill or disposal facility existing prior to April 1, 2010, to any portion of such facility that has been closed or that has ceased operations, or to future expansions of the permitted disposal area of any such facility. A reduction in this requirement shall be allowed only with permission, in the form of a notarized affidavit, from all landowners having an ownership interest in property located less than 200 feet from the facility (or 300 feet for a church). The facility's owner or operator shall enter a copy of the notarized affidavit(s) in the mortgage and conveyance records of the parish or parishes in which the landowners' properties are located. Buffer zone requirements may be waived or modified by the administrative authority for areas of landfills that have been closed in accordance with these regulations and for existing facilities.

B.3.b. - E. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), repromulgated LR 19:1315 (October 1993), amended by the Office of the Secretary, LR 24:2250 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2521 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2490 (October 2005), LR 33:1045 (June 2007), LR 34:613 (April 2008), LR 35:925 (May 2009). LR 37:

§711. Standards Governing Landfills (Type I and II)

A. Surface Hydrology

1. - 2. ...

3. Surface-runoff-diversion levees, canals, or devices shall be installed to prevent drainage from the units of the facility that have not received final cover. The proposed system shall be designed to collect and control at least the water volume resulting from a 24-hour/25-year storm event and /or the peak discharge from a 25-year storm event.

4. - 5. ...

6. A run-on control system shall be installed to prevent run-on during the peak discharge from a 25-year storm event and/or to collect and control at least the water volume resulting from a 24-hour/25-year storm event.

B. Plans and Specifications

1. - 2.d. ...

e. Interim cover or interim compacted cover shall be applied on all operating areas of a facility that will not receive solid waste for a period longer than 60 days. Interim cover or interim compacted cover must be applied within 48 hours of the last receipt of solid waste in the operating area or as soon as weather permits. Facilities that provide interim cover or interim compacted cover shall also implement erosion control measures. Any delay in the application/completion of interim cover due to weather shall not exceed seven calendar days unless a written extension is issued by the Office of Environmental Compliance.

f. - g. ...

h. The facility shall maintain a daily log which includes the following information:

i. specific area of daily and interim cover placement;

ii. source of cover material; and,

iii. depth of cover material applied.

3. - 4.f.iv....

v. The flow path of leachate on the liner surface shall be no greater than 100 feet to the point of collection. (For the purpose of determining this distance, the permit holder or applicant may assume that the leachate flow path is perpendicular to the leachate collection pipe along the cell floor.)

vi. The slope on the surface of the liner toward the leachate collection lines shall be a minimum of 2 percent based on post-settlement conditions. Settlements shall be calculated based on geotechnical testing performed on soil samples extracted from the site. Flatter slopes may be approved by the administrative authority if the slopes keep positive drainage and it is demonstrated that the slopes will not adversely affect the maximum required leachate head in accordance with Clause B.4.f.viii of this Subsection.

vii. The slope of all leachate collection pipes shall be a minimum of 1 percent based on post-settlement conditions. Settlements shall be calculated based on geotechnical testing performed on soil samples extracted from the site. Flatter slopes may be approved by the administrative authority if they keep positive drainage and it is demonstrated that they will not adversely affect the maximum required leachate head in accordance with Clause B.4.f.viii of this Subsection.

viii. - xix. ...

g. Alternate leachate collection and removal system designs may be approved by the administrative authority if the applicant can demonstrate, using modeling methods acceptable to the administrative authority, that the alternate leachate collection and removal system would offer equivalent or greater groundwater protection than the protection offered in LAC 33:VII.711.B.4.f. The demonstration shall indicate the specific types of waste to be disposed and shall include all other relevant site-specific factors. If the administrative authority determines the proposed alternate leachate collection and removal system has not been demonstrated to offer equivalent or greater groundwater protection, the alternate design will be denied and the applicant will be required to follow the standards of Subparagraph B.4.f of this Subsection.

5. - 5.d. ...

6. Gas Collection/Treatment or Removal System

a. Each unit of the facility with a potential for methane gas production and migration shall be required to install a gas collection/treatment or removal system:

i. when the facility is required to install a gas collection/treatment or removal system under 40 CFR Part 60, Subpart WWW; or

ii. when needed to limit methane gas to the lower-explosive limits at the facility boundary and to 25 percent of the lower explosive limits in facility buildings.

b. Sampling protocol, chain of custody, and test methods shall be established for all gas collection/treatment or removal systems.

7. Slope Stability Analysis

a. A slope stability analysis shall be conducted by a professional engineer, licensed in the state of Louisiana, with expertise in geotechnical engineering.

b. Slope stability analyses shall contain an evaluation of the slopes of cell excavations deeper than 10 feet, proposed final elevations, and critical intermediate

conditions, when applicable. Both short-term and long-term analyses shall be performed.

c. A minimum safety factor of 1.5 shall be required for all slope stability analyses unless an alternate safety factor is approved by the administrative authority.

d. Verifications of landfill slopes shall include, at a minimum, analysis of critical surfaces passing through the waste mass, along the liner system interface(s), and through the foundation soils.

e. Soil parameters and conditions utilized in the slope stability analysis shall be based on in-situ geotechnical and hydrogeological data. Geotechnical testing shall be signed by a professional engineer, licensed in the state of Louisiana, with expertise in geotechnical engineering. Geotechnical testing shall be representative of the site conditions with respect to the number of samples and types of tests selected, and in accordance with LAC 33:VII.519.B.3.b. Waste parameters utilized in the analyses shall be justified.

f. The administrative authority may require deep soil borings and/or cone penetration tests (CPTs) to be performed in addition to the soil boring requirements of LAC 33:VII.803.A.2. The number of deep soil borings and/or cone penetration tests and their depths shall be sufficient to adequately represent the subsurface conditions for the slope stability analysis.

g. Slope stability analysis shall also be performed for vertical and lateral expansions, and for any expansion that includes an increase of steepness of the landfill slopes.

h. A report with the results of the slope stability analysis shall be prepared, clearly identifying the methods utilized. The report shall also include references and a summary of the data and parameters utilized, the location of the sections analyzed, a depiction of the slope geometry and critical surfaces, the minimum safety factor for each type of analysis, and the computer-generated print-outs.

C. Facility Administrative Procedures

1. The permit holder shall submit an annual certification of compliance, as required by LAC 33:VII.525.

2. Recordkeeping

a. The permit holder shall maintain all records specified in the application as necessary for the effective management of the facility and for preparing the required reports for the life of the facility and for a minimum of three years after final closure. These records shall be maintained on-site for a minimum of three years. These records may be retained in paper copy or in an electronic format. Electronically maintained records shall be a true and accurate copy of the records required to be maintained. Records older than three years may be kept at an off-site location provided they are readily available to the administrative authority for review upon request. All permit applications and addenda (including those pertaining to prior permits) shall be maintained with the on-site records.

b. - c.iv. ...

v. certified field notes for construction (may be stored at an off-site location with readily available access);

vi. - x. ...

xi. records, including field notes, demonstrating that liners, leachate-control systems, and leak-detection and cover systems are constructed or installed in accordance with appropriate quality assurance procedures;

xii. records on the leachate volume and results of the leachate sampling, if applicable;

2.c.xiii. - 3.b. ...

D. Facility Operations

1. Facility Limitations

a. - j. ...

k. Operating slopes within the landfill shall be maintained in a manner that provides for the proper compaction of waste and the application of cover as required by LAC 33:VII.711.D.3.b.

2. - 2.h. ...

3. Facility Operational Standards

a. Air-Monitoring Standards

i. Facilities receiving waste with a potential to produce methane gas shall be subject to the air-monitoring requirements of this Subparagraph. Facilities subject to this Subparagraph that are also required to maintain a surface monitoring design plan under an effective 40 CFR Part 70 (Title V) operating permit shall comply with the monitoring requirements of the Title V operating permit. Compliance with the monitoring requirements under an effective Title V operating permit shall constitute compliance with the air monitoring requirements of this Section.

a.ii. - c.ii. ...

d. Waste Characterization. The permit holder shall review and maintain the hazardous waste determination performed by the generator in accordance with LAC 33:V.1103 for all solid waste prior to acceptance. Every year thereafter, the permit holder shall require the generator to submit either a written certification that the waste being sent to the permit holder remains unchanged or a new waste characterization. All characterizations and certification records shall be maintained on-site for a period of three years.

4. - 6.e. ...

7. All permit holders shall demonstrate that the permitted landfill height has not been exceeded and shall document that information in the operating plan for the facility. Additionally, the method used to determine overall landfill height shall be documented. The landfill height shall be certified at least every five years by a professional land surveyor, licensed in the state of Louisiana, or a registered professional engineer, licensed in the state of Louisiana. This certification shall be included with the annual certification of compliance required by LAC 33:VII.525.

E. - F.3.d. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 19:1143 (September 1993), repromulgated LR 19:1316 (October 1993), amended by the Office of the Secretary, LR 24:2251 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2523 (November 2000), repromulgated LR 27:704 (May 2001), amended LR 30:1676 (August 2004), amended by the Office of Environmental Assessment, LR 30:2024 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2492 (October 2005), LR 33:1047 (June 2007), LR 33:2145 (October 2007), LR 34:1901 (September 2008), LR 37:

§713. Standards Governing Surface Impoundments (Type I and II)

A. - A.2. ...

3. Surface-runoff-diversion levees, canals, or devices shall be installed to prevent drainage from the units of the facility that have not received final cover. The proposed system must be designed to collect and control at least the water volume resulting from a 24-hour/25-year storm event and/or the peak discharge from a 25-year storm event. Adequate freeboard shall be provided to prevent overtopping by wave action.

4. ...

5. Surface run-on from outside the facility shall be diverted and prevented from entering the facility, with provisions for maintaining adequate freeboard above the requirements of Paragraph A.1 of this Section. A run-on control system shall be installed to prevent run-on during the peak discharge from a 25-year storm event and/or to collect and control at least the water volume resulting from a 24-hour/25-year storm event.

6. ...

B. Plans and Specifications

1. - 4. ...

a. Each unit of the facility with a potential for methane gas production and migration shall be required to install a gas collection/treatment or removal system:

i. when the facility is required to install a gas collection/treatment or removal system under 40 CFR Part 60, Subpart WWW; or

ii. when needed to limit methane gas to the lower-explosive limits at the facility boundary and to 25 percent of the lower-explosive limits in facility buildings.

b. Sampling protocol, chain of custody, and test methods shall be established for all gas collection/treatment or removal systems.

C. Facility Administrative Procedures

1. The permit holder shall submit an annual certification of compliance, as required by LAC 33:VII.525.

2. Recordkeeping

a. The permit holder shall maintain all records specified in the application as necessary for the effective management of the facility and for preparing the required reports for the life of the facility and for a minimum of three years after final closure. These records shall be maintained on-site for a minimum of three years. These records may be retained in paper copy or in an electronic format. Electronically maintained records shall be a true and accurate copy of the records required to be maintained. Records older than three years may be kept at an off-site location provided they are readily available to the administrative authority for review upon request. All permit applications and addenda (including those pertaining to prior permits) shall be maintained with the on-site records.

b. - c.iv. ...

v. certified field notes for construction (may be stored at an off-site location with readily available access);

vi. - x. ...

xi. records, including field notes, demonstrating that liners and leak-detection and cover systems are constructed or installed in accordance with appropriate assurance procedures;

2.xii. - 3.b. ...

D. Facility Operations

1. - 2.h. ...

3. Facility Operational Standards

a. Air-Monitoring Standards

i. Facilities receiving waste with a potential to produce methane gas shall be subject to the air-monitoring requirements of this Subparagraph. Facilities subject to this Subparagraph who are also required to maintain a surface monitoring design plan under an effective 40 CFR Part 70 (Title V) operating permit shall comply with the monitoring requirements of the Title V operating permit. Compliance with the monitoring requirements under an effective Title V operating permit shall constitute compliance with the air monitoring requirements of this Section.

ii. The permit holder or applicant subject to air-monitoring requirements shall submit to the Office of Environmental Services a comprehensive air-monitoring plan that will limit methane gas levels to less than the lower-explosive limits at the facility boundary and to 25 percent of the lower-explosive limits in facility buildings.

a.ii.(a). - d. ...

e. Waste Characterization. The permit holder shall review and maintain the hazardous waste determination performed by the generator in accordance with LAC 33:V.1103 for all solid waste prior to acceptance. Every year thereafter, the permit holder shall require the generator to submit either a written certification that the waste being sent to the permit holder remains unchanged or a new waste characterization. All characterizations and certification records shall be maintained on-site for a period of three years.

4. - 5.e....

E. Facility Closure Requirements

1. - 1.c....

2. Preclosure Requirements. The following standards apply to preclosure requirements for surface impoundments with on-site closure.

a. All facilities with a potential for gas production or migration shall install a gas collection/treatment or removal system, if one is not already present.

b. ...

3. Closure Requirements

a. - c. ...

i. Final cover shall be a minimum of 24 inches of recompacted clay with a permeability of less than 1×10^{-7} cm/sec overlain with an approved geomembrane covering the entire area. Areas that are steeper than 4:1 slope do not require geomembrane overlay. Final slopes shall not be less than four percent nor greater than 3(H):1(V). Alternate final slopes may be approved by the administrative authority. Geotechnical calculations prepared by a registered professional engineer shall be provided if required by the administrative authority for all facilities whose closure plans have not been approved as of [INSERT DATE OF PROMULGATION].

E.3.c.ii. - F.2.b.iv. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), repromulgated LR 19:1316 (October 1993), amended by the Office of the Secretary,

LR 24:2251 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2524 (November 2000), repromulgated LR 27:704 (May 2001), amended LR 30:1676 (August 2004), amended by the Office of Environmental Assessment, LR 30:2025 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2493 (October 2005), LR 33:1053 (June 2007), LR 33:2146 (October 2007), LR 36:1241 (June 2010), LR 37:

§715. Standards Governing Landfarms (Type I and II)

A. Surface Hydrology

1 - 2. ...

3. Surface-runoff-diversion levees, canals, or devices shall be installed to prevent drainage from the units of the facility that have not completed the post-closure period to adjoining areas during the peak discharge from a 25-year storm event and/or to collect and control at least the water volume resulting from a 24-hour/25-year storm event.

4. ...

5. A run-on control system shall be installed to prevent run-on during the peak discharge from a 25-year storm event and/or to collect and control at least the water volume resulting from a 24-hour/25-year storm event.

A.6. - B.2.b. ...

C. Facility Administrative Procedures

1. The permit holder shall submit an annual certification of compliance, as required by LAC 33:VII.525.

b. The following information shall be included in the annual certifications submitted to the Office of Environmental Services:

i. - ii. ...

2. Recordkeeping

a. The permit holder shall maintain all records specified in the application as necessary for the effective management of the facility and for preparing the required reports for the life of the facility and for a minimum of three years after final closure. These records shall be maintained on-site for a minimum of three years. These records may be retained in paper copy or in an electronic format. Electronically maintained records shall be a true and accurate copy of the records required to be maintained. Records older than three years may be kept at an off-site location provided they are readily available to the administrative authority for review upon request. All permit applications and addenda (including those pertaining to prior permits) shall be maintained with the on-site records.

b. ...

c. Records kept on site for all facilities shall include, but not be limited to:

i. - iv. ...

v. certified field notes for construction (may be stored at an off-site location with readily available access);

2.c.vi. - 3.b. ...

D. Facility Operations

1. - 2.g. ...

3. Facility Operational Standards

a. Air-Monitoring Standards

i. Facilities receiving waste with a potential to produce gases shall be subject to the air-monitoring requirements of this Subparagraph. Facilities subject to this Subparagraph who are also required to maintain a surface monitoring design plan under an effective 40 CFR Part 70 (Title V) operating permit shall comply with the monitoring requirements of the Title V operating permit. Compliance

with the monitoring requirements under an effective Title V operating permit shall constitute compliance with the air monitoring requirements of this Section.

a.ii. - j. ...

k. Waste Characterization. The permit holder shall review and maintain the hazardous waste determination performed by the generator in accordance with LAC 33:V.1103 for all solid waste prior to acceptance. Every year thereafter, the permit holder shall require the generator to submit either a written certification that the waste being sent to the permit holder remains unchanged or a new waste characterization. All characterizations and certification records shall be maintained on-site for a period of three years.

D.4. - F.3.b. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), repromulgated LR 19:1316 (October 1993), amended by the Office of the Secretary, LR 24:2251 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2525 (November 2000), repromulgated LR 27:704 (May 2001), amended LR 30:1676 (August 2004), amended by the Office of Environmental Assessment, LR 30:2025 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2493 (October 2005), LR 33:1058 (June 2007), LR 33:2147 (October 2007), LR 35:1880 (September 2009), LR 37:

Subchapter B. Solid Waste Processors

§717. Standards Governing All Type I-A and II-A

Solid Waste Processors

A. Location Characteristics. The information on location characteristics listed in this Subsection is required and shall be provided for all Type I-A and II-A solid waste processing and disposal facilities.

1. - 10. ...

B. Facility Characteristics. The following facility characteristics are required for Type I-A and Type II-A solid waste processors and disposers.

1. - 2.d. ...

3. Buffer Zones

a. Buffer zones of not less than 200 feet shall be provided between the facility and the property line. Buffer zones of not less than 300 feet shall be provided between the facility and the property line when the property line is adjacent to a structure currently being used as a church and having been used as a church prior to the submittal of a permit application. The requirement for a 300 feet buffer zone between the facility and a church shall not apply to any landfill or disposal facility existing prior to April 1, 2010, to any portion of such facility that has been closed or that has ceased operations, or to future expansions of the permitted disposal area of any such facility. A reduction in this requirement shall be allowed only with permission, in the form of a notarized affidavit, from all landowners having an ownership interest in property located less than 200 feet from the facility (or 300 feet for a church). The facility's owner or operator shall enter a copy of the notarized affidavit(s) in the mortgage and conveyance records of the parish or parishes in which the landowners' properties are located. Buffer zone requirements may be waived or modified by the administrative authority for areas of

processing facilities that have been closed in accordance with these regulations and for existing facilities.

3.b. - 7. ...

C. Surface Hydrology

1. ...

2. Surface-runoff-diversion levees, canals, or devices shall be installed to prevent drainage from the units of the facility that have not received final cover. The proposed system shall be designed to collect and control at least the water volume resulting from a 24-hour/25-year storm event and/or the peak discharge from a 25-year storm event.

D. - E.2.b. ...

F. Facility Administrative Procedures

1. The permit holder shall submit an annual certification of compliance, as required by LAC 33:VII.525.

2. Recordkeeping

a. The permit holder shall maintain all records specified in the application as necessary for the effective management of the facility and for preparing the required reports for the life of the facility and for a minimum of three years after final closure. These records shall be maintained on-site for a minimum of three years. These records may be retained in paper copy or in an electronic format. Electronically maintained records shall be a true and accurate copy of the records required to be maintained. Records older than three years may be kept at an off-site location provided they are readily available to the administrative authority for review upon request. All permit applications and addenda (including those pertaining to prior permits) shall be maintained with the on-site records.

2.b. - 3.b. ...

G. Facility Operations

1. - 2.d. ...

3. Facility Operational Standards

a. Waste Characterization. The permit holder shall review and maintain the hazardous waste determination performed by the generator in accordance with LAC 33:V.1103 for all solid waste prior to acceptance. Every year thereafter, the permit holder shall require the generator to submit either a written certification that the waste being sent to the permit holder remains unchanged or a new waste characterization. All characterizations and certification records shall be maintained on-site for a period of three years.

G.3.b. - I.3. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of the Secretary, LR 24:2252 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2526, 2610 (November 2000), repromulgated LR 27:704 (May 2001), amended by the Office of Environmental Assessment, LR 30:2025 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2494 (October 2005), LR 33:1061 (June 2007), LR 33:2148 (October 2007), LR 34:613 (April 2008), LR 35:926 (May 2009), LR 37:

Subchapter C. Minor Processing and Disposal Facilities

§719. Standards Governing All Type III Processing and Disposal Facilities

A. Location Characteristics. The information on location characteristics listed in this Subsection is required and shall

be provided for all Type III solid waste processing and disposal facilities.

1. - 10. ...

B. Facility Characteristics. The following facility characteristics are required for all Type III solid waste facilities.

1. - 2.d....

3. Buffer Zones

a. Buffer zones of not less than 50 feet shall be provided between the facility and the property line. Buffer zones of not less than 200 feet shall be provided between the facility and the property line for any new facility. The requirement for a 200 feet buffer zone between the facility and the property line shall not apply to any facility existing on [INSERT DATE OF PROMULGATION], to any portion of such facility that has been closed or that has ceased operations, or to future expansions of the permitted disposal area of any such facility. Buffer zones of not less than 300 feet shall be provided between the facility and the property line when the property line is adjacent to a structure currently being used as a church and having been used as a church prior to the submittal of a permit application. The requirement for a 300 feet buffer zone between the facility and a church shall not apply to any landfill or disposal facility existing prior to April 1, 2010, to any portion of such facility that has been closed or that has ceased operations, or to future expansions of the permitted disposal area of any such facility. A reduction in this requirement shall be allowed only with permission, in the form of a notarized affidavit, from all landowners having an ownership interest in property located less than 50 feet from the facility (for facilities existing on [INSERT DATE OF PROMULGATION]), less than 200 feet from the facility (for facilities constructed after [INSERT DATE OF PROMULGATION]), or less than 300 feet from the facility (for facilities located less than 300 feet from a church). The facility's owner or operator shall enter a copy of the notarized affidavit(s) in the mortgage and conveyance records of the parish or parishes in which the landowners' properties are located. Buffer zone requirements may be waived or modified by the administrative authority for areas of woodwaste/construction/demolition-debris landfills that have been closed in accordance with these regulations and for existing facilities. Notwithstanding this Paragraph, Type III air curtain destructors and composting facilities that receive putrescible, residential, or commercial waste shall meet the buffer zone requirements in LAC 33:VII.717.B.3. In addition, air curtain destructors shall maintain at least a 1,000-foot buffer from any dwelling other than a dwelling or structure located on the property on which the burning is conducted (unless the appropriate notarized affidavit waivers are obtained).

3.b. - 7. ...

C. Surface Hydrology

1. - 2. ...

3. Surface-runoff-diversion levees, canals, or devices shall be installed to prevent drainage from the units of the facility that have not received final cover. The proposed system shall be designed to collect and control at least the water volume resulting from a 24-hour/25-year storm event and/or the peak discharge from a 25-year storm event.

C.4. - E.2. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2527 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2495 (October 2005), LR 33:1065 (June 2007), LR 33:2149 (October 2007), LR 34:613 (April 2008), LR 35:926 (May 2009), LR 37:

§721. Standards Governing Construction and Demolition Debris and Woodwaste Landfills (Type III)

A. Plans and Specifications

1. - 2.a.vii. ...

b. Wastes shall be covered with silty clays applied a minimum of 12 inches thick. At a minimum, all wastes shall be covered within 30 days of disposal.

c. Wastes shall be deposited in the smallest practical area and compacted each day. Multiple working faces are prohibited.

d. The facility shall maintain a log including the following information:

i. date of cover material application;

ii. volume of cover material applied;

iii. description of the location where the cover material was applied;

iv. source of the cover material; and

v. depth of cover material applied.

3. - 3.b. ...

B. Facility Administrative Procedures

1. The permit holder shall submit an annual certification of compliance, as required by LAC 33:VII.525.

2. Recordkeeping

a. The permit holder shall maintain all records specified in the application as necessary for the effective management of the facility and for preparing the required reports for the life of the facility and for a minimum of three years after final closure. These records shall be maintained on-site for a minimum of three years. These records may be retained in paper copy or in an electronic format. Electronically maintained records shall be a true and accurate copy of the records required to be maintained. Records older than three years may be kept at an off-site location provided they are readily available to the administrative authority for review upon request. All permit applications and addenda (including those pertaining to prior permits) shall be maintained with the on-site records.

b. - c. ...

i. copies of the applicable Louisiana solid waste rules and regulations;

ii. the permit;

iii. the permit application;

iv. permit modifications; and

v. a log documenting the dates of cover application and the volume of cover applied.

3. - 3.b....

C. Facility Operations

1. - 1.g. ...

h. Operating slopes within the landfill shall be maintained in a manner that provides for the proper

compaction of waste and the application of cover material as required by LAC 33:VII.721.A.2.b and c.

2. - 5.d. ...

6. All permit holders shall demonstrate that the permitted landfill height has not been exceeded and shall document that information in the operating plan for the facility. Additionally, the method used to determine overall landfill height shall be documented. The landfill height shall be certified at least every five years by a professional land surveyor, licensed in the state of Louisiana, or a registered professional engineer, licensed in the state of Louisiana. This certification shall be included with the annual certification of compliance required by LAC 33:VII.525.

D. - E.3. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 20:1001 (September 1994), amended by the Office of the Secretary, LR 24:2252 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2527 (November 2000), repromulgated LR 27:705 (May 2001), amended by the Office of Environmental Assessment, LR 30:2025 (September 2004), LR 31:1577 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2495 (October 2005), LR 33:1067 (June 2007), LR 33:2149 (October 2007), LR 34:1901 (September 2008), LR 37:

§723. Standards Governing Composting Facilities

A. - B. ...

C. Facility Administrative Procedures

1. The permit holder shall submit an annual certification of compliance, as required by LAC 33:VII.525.

2. Recordkeeping

a. The permit holder shall maintain all records specified in the application as necessary for the effective management of the facility and for preparing the required reports for the life of the facility and for a minimum of three years after final closure. These records shall be maintained on-site for a minimum of three years. These records may be retained in paper copy or in an electronic format. Electronically maintained records shall be a true and accurate copy of the records required to be maintained. Records older than three years may be kept at an off-site location provided they are readily available to the administrative authority for review upon request. All permit applications and addenda (including those pertaining to prior permits) shall be maintained with the on-site records.

C.2.b. - E.4. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 20:1001 (September 1994), amended by the Office of the Secretary, LR 24:2252 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2528 (November 2000), repromulgated LR 27:705 (May 2001), amended by the Office of Environmental Assessment, LR 30:2025 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2496 (October 2005), LR 33:1069 (June 2007), LR 33:2150 (October 2007), LR 37:

§725. Standards Governing Separation and Woodwaste Processing Facilities (Type III)

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

B. Facility Administrative Procedures

1. The permit holder shall submit an annual certification of compliance, as required by LAC 33:VII.525.

2. Recordkeeping

a. The permit holder shall maintain all records specified in the application as necessary for the effective management of the facility and for preparing the required reports for the life of the facility and for a minimum of three years after final closure. These records shall be maintained on-site for a minimum of three years. These records may be retained in paper copy or in an electronic format. Electronically maintained records shall be a true and accurate copy of the records required to be maintained. Records older than three years may be kept at an off-site location provided they are readily available to the administrative authority for review upon request. All permit applications and addenda (including those pertaining to prior permits) shall be maintained with the on-site records.

B.2.b. - D.3. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 20:1001 (September 1994), LR 22:280 (April 1996), amended by the Office of the Secretary, LR 24:2252 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2528 (November 2000), repromulgated LR 27:705 (May 2001), amended by the Office of Environmental Assessment, LR 30:2026 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2496 (October 2005), LR 33:1073 (June 2007), LR 33:2151 (October 2007), LR 37:

Chapter 13. Financial Assurance for All Processors and Disposers of Solid Waste

§1301. Financial Responsibility during Operation

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2154.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:1088 (June 2007), amended LR 33:2153 (October 2007), repealed LR 37:

§1303. Financial Responsibility for Closure and Post-Closure Care

A. - A.1. ...

2. Permit holders of existing facilities shall submit financial assurance documentation that complies with the requirements of this Chapter. Applicants or permit holders for new facilities shall submit evidence of financial assurance in accordance with this Chapter at least 60 days before the date on which solid waste is first received for processing or disposal. The financial assurance documentation shall be approved by the administrative authority prior to any acceptance of waste.

3. The applicant or permit holder shall submit to the Office of Environmental Services the estimated closure date and the estimated cost of closure and post-closure care in accordance with the following procedures.

a. The applicant or permit holder must have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in these regulations. The estimate must equal the cost of closure at the point in the facility's operating life when the extent and manner of its operation would make closure the most expensive, as indicated by the closure plan, and shall be based on the cost of hiring a third party to close the facility in accordance with the closure plan.

b. The applicant or permit holder of a facility subject to post-closure monitoring or maintenance requirements must have a detailed written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the provisions of these regulations. The estimate of post-closure costs is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required and shall be based on the cost of hiring a third party to conduct post-closure activities in accordance with the closure plan and the most expensive costs of post-closure care during the post-closure care period.

c. The cost estimates must be adjusted within 30 days after each anniversary of the date on which the first cost estimate was prepared on the basis of either the inflation factor derived from the Annual Implicit Price Deflator for Gross Domestic Product, as published by the U.S. Department of Commerce in its *Survey of Current Business* or a reestimation of the closure and post-closure costs in accordance with Subparagraphs A.2.a and b of this Section. The permit holder or applicant must revise the cost estimate whenever a change in the closure/post-closure plans increases or decreases the cost of the closure/post-closure plans. The permit holder or applicant must submit a written notice of any such adjustment to the Office of Environmental Services within 15 days following such adjustment.

d. For trust funds, the first payment must be at least equal to the current closure and post-closure cost estimate, divided by the number of years in the pay-in period. Subsequent payments must be made no later than 30 days after each annual anniversary of the date of the first payment. The amount of each subsequent payment must be determined by subtracting the current value of the trust fund from the current closure and post-closure cost estimates and dividing the result by the number of years remaining in the pay-in period. For landfill facilities, the initial pay-in period is based on the estimated life of the facility, up to 20 years, unless a longer term is specified in the permit. For all other facilities, the pay-in period is the initial term of the permit, unless a longer term is specified in the permit. Applicants requesting a longer pay-in period shall justify the need for the longer term to the administrative authority.

4. Minor deviations from specified language contained in the appendices of LAC 33:VII.1399 may be approved by the administrative authority on a case-by-case basis if the administrative authority determines that the revised language remains equivalent to or more stringent than the language specified in the specific appendix. The applicant shall show a specific need for the change and all changes shall be approved by the administrative authority before the document can be used to meet the requirements of this Chapter.

5. The permit holder or applicant shall notify the Office of Environmental Services within 30 days of first becoming aware of a reduction in a bond rating when using the financial test allowed by LAC 33:VII.1303.H or I.

B. Financial Assurance Mechanisms. The financial assurance mechanism must be one or a combination of the following: a trust fund, a surety bond, a performance bond, a letter of credit, an insurance policy, or a financial test and/or corporate guarantee. The financial assurance mechanism is subject to the approval of the administrative authority and must fulfill the following criteria.

1. - 4. ...

5. The language of the financial assurance mechanisms listed in this Section shall ensure that the instruments satisfy the following criteria.

a. The financial assurance mechanisms shall ensure that the amount of funds assured is sufficient to cover the costs of closure and post-closure care when needed.

b. The financial assurance mechanisms shall ensure that funds will be available in a timely fashion when needed.

c. The financial assurance mechanisms shall be obtained by the permit holder or applicant by the effective date of these requirements or at least 60 days prior to the initial receipt of solid waste, whichever is later, and shall provide financial assurance until the permit holder or applicant is released from the financial assurance requirements under this Section.

d. The financial assurance mechanisms shall be legally valid, binding, and enforceable under state and federal law.

6. A financial assurance mechanism may be cancelled or terminated only if alternate financial assurance is substituted as specified in the appropriate section or if the permit holder or applicant is no longer required to demonstrate financial assurance in accordance with these regulations.

C. Trust Funds. A permit holder or applicant may satisfy the requirements of this Section by establishing a closure trust fund that conforms to the following requirements and submitting an originally signed duplicate of the trust agreement to the Office of Environmental Services.

1. - 7. ...

8. The administrative authority may, on the basis of a reasonable belief that the facility will close before pay-in is completed and the permit holder or applicant does not have adequate funds in the trust for closure and post-closure care, require reports regarding the financial condition of the permit holder or applicant. If the administrative authority finds, on the basis of such reporting or other information, that the permit holder or applicant no longer satisfies the requirements of this Subsection, the permit holder or applicant shall provide alternate financial assurance as specified in this Section within 30 days after notification of such a finding.

9. After beginning final closure, a permit holder, or any other person authorized by the permit holder to perform closure and/or post-closure, may request reimbursement for closure and/or post-closure expenditures by submitting itemized bills to the Office of Environmental Services. Within 60 days after receiving bills for such activities, the administrative authority will determine whether the closure and/or post-closure expenditures are in accordance with the

closure plan or otherwise justified, and, if so, he or she shall instruct the trustee to make reimbursement in such amounts as the administrative authority specifies in writing. If the administrative authority has reason to believe that the cost of closure and/or post-closure will be significantly greater than the value of the trust fund, he may withhold reimbursement for such amounts as he deems prudent until he determines that the permit holder is no longer required to maintain financial assurance.

10. The wording of the trust agreement shall be identical to the wording in LAC 33:VII.1399.Appendix D, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted. The trust agreement shall be accompanied by a formal certification of acknowledgement.

D. Financial Guarantee Bonds. A permit holder or applicant may satisfy the requirements of this Section by obtaining a financial guarantee bond that conforms to the following requirements and submitting the bond to the Office of Environmental Services.

1. ...

2. The permit holder or applicant who uses a financial guarantee bond to satisfy the requirements of this Section must also provide to the administrative authority evidence of the establishment of a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the administrative authority. The wording of the standby trust fund shall be as specified in LAC 33:VII.1399.Appendix D; the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

3. - 7. ...

8. The wording of the financial guarantee bond guaranteeing payment into a standby trust fund shall be identical to the wording in LAC 33:VII.1399.Appendix E, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

E. Performance Bonds. A permit holder or applicant may satisfy the requirements of this Section by obtaining a performance bond that conforms to the following requirements and submitting the bond to the Office of Environmental Services.

1. ...

2. The permit holder or applicant who uses a performance bond to satisfy the requirements of this Section must also provide to the administrative authority evidence of establishment of a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the administrative authority. The wording of the standby trust fund shall be as specified in LAC 33:VII.1399.Appendix D; the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

E.3. - G.10. ...

H. Financial Test. A permit holder, applicant, or guarantor of the permit holder or applicant, which will be responsible for the financial obligations, may satisfy the requirements of this Section by demonstrating that he or she passes a financial test as specified in this Subsection. The assets of the guarantor of the applicant or permit holder shall

not be used to determine whether the applicant or permit holder satisfies the financial test, unless the guarantor has supplied a corporate guarantee as outlined in this Subsection.

1. To pass this test, the permit holder, applicant, or guarantor of the permit holder or applicant, must meet the criteria of one of the following provisions.

a. The permit holder, applicant, or guarantor of the permit holder or applicant must have:

i. tangible net worth of at least six times the sum of the current closure and post-closure cost estimates to be demonstrated by this test;

ii. ...

iii. assets in the United States amounting to either at least 90 percent of his or her total assets, or at least six times the sum of the current closure and post-closure cost estimates, to be demonstrated by this test.

b. The permit holder, applicant, or guarantor of the permit holder or applicant shall have:

i. a ratio of less than 1.5 comparing total liabilities to net worth;

ii. tangible net worth of at least \$10 million; and

iii. assets in the United States amounting to either 90 percent of his or her total assets, or at least six times the sum of the current closure and post-closure cost estimates, to be demonstrated by this test.

c. The permit holder, applicant, or guarantor of the permit holder or applicant must have:

i. a current rating for his or her most recent bond issuance of AAA, AA, A, or BBB, as issued by *Standard and Poor's*, or Aaa, Aa, or Baa, as issued by *Moody's*;

ii. tangible net worth of at least \$10 million; and

iii. assets in the United States amounting to either 90 percent of his or her total assets or at least six times the sum of the current closure and post-closure cost estimates, to be demonstrated by this test.

d. The permit holder, applicant or guarantor of the permit holder or applicant shall have:

i. a ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion, and amortization, minus \$10 million, to total liabilities;

ii. tangible net worth of at least \$10 million; and

iii. assets in the United States amounting to either 90 percent of his or her total assets, or at least six times the sum of the current closure and post-closure cost estimates, to be demonstrated by this test.

2. To demonstrate that he or she meets this test, the permit holder, applicant, or guarantor of the permit holder or applicant must submit the following three items to the Office of Environmental Services:

a. a letter signed by the chief financial officer of the permit holder, applicant, or guarantor demonstrating and certifying satisfaction of the criteria in Paragraph H.1 of this Section and including the information required by Paragraph H.4 of this Section. If the financial test is provided to demonstrate both assurance for closure and/or post-closure care and liability coverage, a single letter to cover both forms of financial responsibility is required;

b. a copy of the independent certified public accountant's report on the financial statements of the permit holder, applicant, or guarantor of the permit holder or applicant for the latest completed fiscal year; and

c. If the chief financial officer's letter providing evidence of financial assurance includes financial data that are different from the data in the audited financial statements in subsection H.2.b of this Section, a special report from the independent certified public accountant of the permit holder, applicant, or guarantor of the permit holder or applicant shall be submitted. The special report shall be based on an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and reasons for any differences.

3. The administrative authority may disallow use of this test on the basis of the opinion expressed by the independent CPA in his report on qualifications based on the financial statements. An adverse opinion or a disclaimer of opinion will be cause for disallowance. The administrative authority will evaluate other qualifications on an individual basis. The administrative authority may disallow the use of this test on the basis of the accessibility of the assets of the guarantor, permit holder, or applicant. The permit holder, applicant, or guarantor must provide alternate financial assurance, as specified in this Section, within 30 days after notification of disallowance.

4. The permit holder, applicant, or guarantor of the permit holder or applicant shall provide to the Office of Environmental Services a letter from the chief financial officer, the wording of which shall be identical to the wording in LAC 33:VII.1399.Appendix I, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted. The letter shall list all the current cost estimates, in state or out of state, covered by a financial test, including, but not limited to, cost estimates required for solid waste management facilities under this Section, cost estimates required for UIC facilities under 40 CFR Part 144, if applicable, cost estimates required for petroleum underground storage tank facilities under 40 CFR Part 280, if applicable, cost estimates required for PCB storage facilities under 40 CFR Part 761, if applicable, and cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, if applicable.

5. - 6. ...

7. After initial submission of the items specified in Paragraph H.2 of this Section, the permit holder, applicant, or guarantor of the permit holder or applicant must send updated information to the Office of Environmental Services within 90 days after the close of each succeeding fiscal year. This information must include all three items specified in Paragraph H.2 and the adjusted item specified in Subparagraph A.2.c of this Section.

8. The administrative authority may, on the basis of a reasonable belief that the permit holder, applicant, or guarantor of the permit holder or applicant may no longer meet the requirements of this Subsection, require reports of financial condition at any time in addition to those specified in Paragraph H.2 of this Section. If the administrative authority finds, on the basis of such reports or other information, that the permit holder, applicant, or guarantor of the permit holder or applicant no longer meets the

requirements of Paragraph H.2 of this Section, the permit holder or applicant, or guarantor of the permit holder or applicant must provide alternate financial assurance as specified in this Section within 30 days after notification of such a finding.

9. A permit holder or applicant may meet the requirements of this Subsection for closure and/or post-closure by obtaining a written guarantee, hereafter referred to as a "corporate guarantee." The guarantor must be the direct or higher-tier parent corporation of the permit holder or applicant for the solid waste facility or facilities to be covered by the guarantee, a firm whose parent corporation is also the parent corporation of the permit holder or applicant, or a firm with a "substantial business relationship" with the permit holder or applicant. The guarantor must meet the requirements and submit all information required for permit holders or applicants in Paragraphs H.1-8 of this Section and must comply with the terms of the corporate guarantee. The corporate guarantee must accompany the items sent to the administrative authority specified in Paragraphs H.2 and 4 of this Section. The wording of the corporate guarantee must be identical to the wording in LAC 33:VII.1399.Appendix J, except that instructions in brackets are to be replaced with the relevant information and the brackets removed. The terms of the corporate guarantee must be in an authentic act signed and sworn by an authorized representative of the guarantor before a notary public and must provide that:

a. the guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in this Section;

b. the guarantor is the direct or higher-tier parent corporation of the permit holder or applicant of the solid waste facility or facilities to be covered by the guarantee, a firm whose parent corporation is also the parent corporation of the permit holder or applicant, or a firm with a "substantial business relationship" with the permit holder or applicant, and the guarantee extends to certain facilities;

c. - i. ...

j. the guarantor agrees that if the permit holder or applicant fails to provide alternative financial assurance as specified in this Section, and to obtain written approval of such assurance from the administrative authority within 60 days after the administrative authority receives the guarantor's notice of cancellation, the guarantor shall provide such alternate financial assurance in the name of the permit holder or applicant; and

k. ...

I. Local Government Financial Test. An owner or operator that satisfies the requirements of Paragraphs I.1-3 of this Section may demonstrate financial assurance up to the amount specified in Paragraph I.4 of this Section.

1. Financial Component

a. The permit holder or applicant must satisfy the following conditions, as applicable:

i. if the owner or operator has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, it must have a current rating of Aaa, Aa, A, or Baa, as issued by *Moody's*, or AAA, AA, A, or BBB, as issued by *Standard and Poor's*, on all such general obligation bonds; or

ii. the permit holder or applicant must satisfy the ratio of cash plus marketable securities to total expenditures

being greater than or equal to 0.05 and the ratio of annual debt service to total expenditures less than or equal to 0.20 based on the owner or operator's most recent audited annual financial statement.

b. The permit holder or applicant must prepare its financial statements in conformity with *Generally Accepted Accounting Principles* for governments and have its financial statements audited by an independent certified public accountant (or appropriate state agency).

c. A local government is not eligible to assure its obligations under this Subsection if it:

i. is currently in default on any outstanding general obligation bonds; or

ii. has any outstanding general obligation bonds rated lower than Baa as issued by *Moody's* or BBB as issued by *Standard and Poor's*; or

1.c.iii. - 2. ...

3. Recordkeeping and Reporting Requirements

a. The local government permit holder or applicant must place the following items in the facility's operating record:

a.i. - b.ii. ...

c. After the initial placement of the items in the facility's operating record, the local government permit holder or applicant must update the information and place the updated information in the operating record within 180 days following the close of the permit holder or applicant's fiscal year.

d. The local government permit holder or applicant is no longer required to meet the requirements of Paragraph I.3 of this Section when:

i. the permit holder or applicant substitutes alternate financial assurance, as specified in this Section; or

ii. the owner or operator is released from the requirements of this Chapter in accordance with Subsection A of this Section.

I.3.e. - J.2.c. ...

K. Use of Multiple Mechanisms. An owner or operator may demonstrate financial assurance for closure, post-closure, and corrective action, in accordance with this Chapter, by establishing more than one financial mechanism per facility, except that mechanisms guaranteeing performance, rather than payment, may not be combined with other instruments. The mechanisms must be as specified in Subsections C-J of this Section, except that financial assurance for an amount at least equal to the current cost estimate for closure, post-closure care, and/or corrective action may be provided by a combination of mechanisms, rather than a single mechanism.

L. Providing alternate financial assurance as specified in this Section does not constitute a modification and is not subject to LAC 33:VII.517.

M. Discounting. The administrative authority may allow discounting of closure and post-closure cost estimates in Subsection A of this Section, and/or corrective action costs in LAC 33:VII.1301.A, up to the rate of return for essentially risk-free investments, net of inflation, under the following conditions:

1. the administrative authority determines that cost estimates are complete and accurate and the owner or operator has submitted a statement from a professional engineer to the Office of Environmental Services so stating;

2. the state finds the facility in compliance with applicable and appropriate permit conditions;

3. the administrative authority determines that the closure date is certain and the owner or operator certifies that there are no foreseeable factors that will change the estimate of site life; and

4. discounted cost estimates are adjusted annually to reflect inflation and years of remaining life.

N. When the permit holder is the state or federal government, the facility is exempt from the requirements of this Section.

O. The permit application should include a description of the financial structure of the operating unit including capital structure, principal ownership, and insurance coverage for personal injury and property damage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30: 2001 et seq., and in particular R.S. 30:2154.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:1090 (June 2007), amended LR 33:2154 (October 2007), LR 36:2555 (November 2010), LR 37:

§1305. Financial Responsibility for Corrective Action for Type II Landfills

A. - B. ...

C. When the permit holder is the state or federal government, the facility is exempt from the requirements of this Section.

D. The language of the financial assurance mechanisms listed in this Section shall ensure that the instruments satisfy the following criteria.

1. The financial assurance mechanisms shall ensure that the amount of funds assured is sufficient to cover the costs of corrective action for known releases when needed.

2. The financial assurance mechanisms shall ensure that funds will be available in a timely fashion when needed.

3. The financial assurance mechanisms shall be legally valid, binding, and enforceable under state and federal law.

E. A financial assurance mechanism may be cancelled or terminated only if alternate financial assurance is substituted as specified in the appropriate Section or if the permit holder or applicant is no longer required to demonstrate financial assurance in accordance with these regulations.

F. The permit application shall include a description of the financial structure of the operating unit including capital structure, principal ownership, and insurance coverage for personal injury and property damage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30: 2001 et seq., and in particular R.S. 30:2154.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:1098 (June 2007), amended LR 33:2156 (October 2007), LR 37:

§1307. Incapacity of Permit Holders, Applicants, or Financial Institutions

A. A permit holder or applicant shall notify the Office of Environmental Services by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the permit holder or applicant as debtor, within 10 days after commencement of the proceeding. A guarantor of a corporate guarantee as specified in LAC 33:VII.1303.H.9 shall make such a notification if he is named as debtor, as

required under the terms of the corporate guarantee (see LAC 33:VII.1399, Appendix J).

B. A permit holder or applicant who fulfills the requirements of LAC 33:VII.1303 or 1305 by obtaining a trust fund, financial guarantee bond, performance bond, letter of credit, or insurance policy will be deemed to be without the required financial assurance in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing the financial guarantee bond, performance bond, letter of credit, or insurance policy to issue such instruments. The permit holder or applicant shall establish other financial assurance within 60 days after such an event.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2154.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 37:

§1399. Financial Documents—Appendices A, B, C, D, E, F, G, H, I, and J

- A. Reserved.
- B. Reserved.
- C. - H. ...
- I. Appendix I

SOLID WASTE FACILITY
LETTER FROM THE CHIEF FINANCIAL OFFICER
(Liability Coverage, Closure, and/or Post-Closure)

Secretary
Louisiana Department of Environmental Quality
Post Office Box 4313
Baton Rouge, Louisiana 70821-4313
Attention: Office of Environmental Services,
Waste Permits Division
RE: [Facility name, agency interest number, and permit number]
Dear Sir:

I am the chief financial officer of [name and address of firm, which may be the permit holder, applicant, or parent corporation of the permit holder or applicant]. This letter is in support of this firm's use of the financial test to demonstrate financial responsibility for [insert "liability coverage," "closure," and/or "post-closure," as applicable] as specified in [insert "LAC 33:VII.1301," "LAC 33:VII.1303," or "LAC 33:VII.1301 and 1303"].

[Fill out the following four paragraphs regarding facilities and associated liability coverage, and closure and post-closure cost estimates. If your firm does not have facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, list the facility name, site name, agency interest number, site identification number, and facility permit number.]

1. The firm identified above is the [insert "permit holder," "applicant for a standard permit," or "parent corporation of the permit holder or applicant for a standard permit"] of the following facilities, whether in Louisiana or not, for which liability coverage is guaranteed and demonstrated through a financial test similar to that specified in LAC 33:VII.1301. The amount of annual aggregate liability coverage covered by the test is shown for each facility:

2. The firm identified above is the [insert "permit holder," "applicant for a standard permit," or "parent corporation of the permit holder or applicant for a standard permit"] of the following facilities, whether in Louisiana or not, for which financial assurance for [insert "closure," "post-closure," or "closure and post-closure"] is guaranteed and demonstrated through a financial test similar to that specified in LAC 33:VII.1303 or other forms of self-insurance. The current [insert "closure," "post-closure," or "closure and post-closure"] cost estimates covered by the test are shown for each facility:

3. This firm guarantees through a corporate guarantee similar to that specified in [insert "LAC 33:VII.1303," or "LAC 33:VII.1301 and 1303"], for [insert "liability coverage," "closure care," "post-closure care," or "closure and post-closure care"] of the following facilities, whether in Louisiana or not, of which [insert the name of the permit holder or applicant] are/is a subsidiary of this firm. The amount of annual aggregate liability coverage covered by the guarantee for each facility and/or the current cost estimates for the closure and/or post-closure care so guaranteed is shown for each facility:

4. This firm is the permit holder or applicant of the following facilities, whether in Louisiana or not, for which financial assurance for liability coverage, closure and/or post-closure care is not demonstrated either to the U.S. Environmental Protection Agency or to a state through a financial test or any other financial assurance mechanism similar to those specified in LAC 33:VII.1301 and/or 1303. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility.

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed year, ended [date].

* * *

J. Appendix J

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

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2154.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:1098 (June 2007), amended LR 37:

Chapter 15. Solid Waste Fees

§1501. Standard Permit Application Review Fee

A. - D. ...

E. The administrative authority may waive fees for modifications that are:

1. initiated by the administrative authority; or
2. submitted as a result of a permit condition that requires submittal of a modification request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2154.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 29:688 (May 2003), LR 29:2051 (October 2003), repromulgated by the Office of the Secretary, Legal Affairs Division, LR 33:1108 (June 2007), amended LR 37:

Chapter 30. Appendices

§3003. Public Notice Example—Appendix B

A. The following is an example of a public notice to be placed in the local newspaper after submittal of a permit application to the Office of Environmental Services for existing/proposed solid waste facilities.

PUBLIC NOTICE
OF
SUBMITTAL OF PERMIT APPLICATION
[NAME OF APPLICANT/FACILITY]
FACILITY [location], PARISH [location], LOUISIANA
Notice is hereby given that [name of applicant] submitted to the Department of Environmental Quality, Office of

Environmental Services, [insert division name] an application for a permit to operate a [type of solid waste facility] in [parish name], Range__, Township__, Section__, which is approximately [identify the physical location of the site by direction and distance from the nearest town].

Comments concerning the facility may be filed with the Secretary of the Louisiana Department of Environmental Quality at the following address:

Louisiana Department of Environmental Quality
Office of Environmental Services
[insert division name]
Post Office Box 4313
Baton Rouge, Louisiana 70821-4313

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2154.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 37:

Subpart 2. Recycling

Chapter 103. Recycling and Waste Reduction Rules

§10303. Definitions

A. The following words, terms, and phrases, when used in conjunction with LAC 33:VII.Subpart 1, shall have the meanings ascribed to them in this Chapter, except where the context clearly indicates a different meaning.

* * *

Speculative Accumulation of Recyclable Materials—the accumulation of recyclable materials for which no current use, reuse, recycling or any reasonably anticipated future market for the use, reuse, or recycling of the material exists.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:35 (January 1992), amended by the Office of the Secretary, Legal Affairs Division, LR 37:

§10313. Standards Governing the Accumulation of Recyclable Materials

A. The speculative accumulation of recyclable materials is prohibited. The recyclable materials subject to the speculative accumulation prohibition are those materials that:

1. are not exempt from regulation as a solid waste by federal or state regulations and/or statutes;
2. otherwise meet the definition of solid waste; and
3. are not in compliance with standards governing solid waste accumulation and storage set forth in LAC 33:VII.503.

B. A recyclable material is not speculatively accumulated, however, if the person or entity accumulating the material can demonstrate that the material is potentially recyclable, recoverable, and/or reclaimable and has a feasible means of being recycled, recovered, and/or reclaimed; and that—during the calendar year (commencing on January 1), the amount of material that is recycled, recovered, and/or reclaimed on-site and/or sent off-site for recycling equals at least 50 percent by weight or volume of the amount of the material accumulated at the beginning of the period. In calculating the percentage of turnover, the 50 percent requirement shall be applied to only material of the same type and that is recycled and in the same manner.

C. The burden of demonstrating that recyclable materials are not being speculatively accumulated shall rest on the person or entity accumulating the materials. Persons or entities accumulating recyclable materials for use, reuse, or recycling shall:

1. be able to demonstrate, to the satisfaction of the administrative authority, their intent to use, reuse, or recycle the materials and that a current or reasonably anticipated future market (or demand) for the use, reuse, or recycling of the material exists;

2. maintain records (e.g., manifests/trip tickets for disposal; bills of sale for materials) specifying the quantities of recyclable materials generated, accumulated and/or transported, prior to use, reuse, or recycling; and

3. maintain records (e.g., manifests/trip tickets for disposal; bills of sale for materials) demonstrating the amount (by weight or volume) of materials used, reused, or recycled.

D. Recyclable materials that are accumulated prior to being recycled shall be stored in an environmentally sound manner and releases to air, water and land shall be minimized to the maximum extent possible.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2154.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, 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 regulations. Persons commenting should reference this proposed regulation by SW053. Such comments must be received no later than May 4, 2011, at 4:30 p.m., and should be sent to Donald Trahan, Attorney Supervisor, Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to donald.trahan@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 SW053. These proposed regulations are available on the internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

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.

Public Hearing

A public hearing will be held on April 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 Donald Trahan 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.

Herman Robinson, CPM
Executive Counsel

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Solid Waste**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule change will have no impact on state government expenditures. The proposed rule change will create a more efficient permitting process for the industry and DEQ. Such efficiencies include condensing the permit requirements into one chapter, which before were in numerous chapters and duplicative; and the creation of compliance certifications, which allow DEQ to monitor permit compliance by solid waste facilities. In addition, as a result of Acts 49 and 153 of the 2010 Regular Legislative Session, new permits types (General and Regulatory) have been established, yet will not result in an increase in expenditures, as existing resources will be used.

As a result of the proposed rule change deleting the liability insurance requirement, local governments may realize a cost-savings. However, potential savings are uncertain since liability insurance costs vary by waste facility. To the extent an event occurs that results in an indeterminable increase in costs that would have otherwise been covered by liability insurance, the operator's cost will increase.

Some facilities may choose to continue to carry liability insurance. For facilities that continue to carry liability insurance, the proposed rule should have little or no net effect on costs for local government units operating solid waste facilities. The new requirement for a permittee to submit an annual compliance certification should increase the regulated entity's paperwork costs and/or third-party consulting fees. However, the local governmental unit should also realize direct savings because the solid waste permitting process is being changed to require fewer notices of deficiencies from LDEQ. Consequently, the applicant will submit fewer responses to these notices of deficiencies, which will reduce their costs.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change will have no effect on revenue collected by LDEQ, since no new permitting fees will be charged to the regulated community. The proposed rule will have no effect on revenue collected by local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

As a result of the proposed rule deleting the liability insurance requirement, the industry may realize a cost-savings. However, potential savings are uncertain since liability insurance costs vary by waste facility. To the extent an event occurs that results in an indeterminable increase in costs that would have otherwise been covered by liability insurance, the operator's cost will increase.

Some facilities may choose to continue to carry liability insurance. For facilities that continue to carry liability insurance, the proposed rule should have little or no net effect to costs and/or economic benefits. The new requirement for a permittee to submit an annual compliance certification should increase the regulated entity's paperwork costs and/or third-party consulting fees. However, the regulated community

should also realize direct savings in paperwork costs and/or third-party consulting fees because the solid waste permitting process is being changed to require fewer notices of deficiencies from LDEQ. Consequently, the applicant will need to submit fewer responses to these notices of deficiencies, which will reduce their costs.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule should have no effect on competition and employment.

Herman Robinson, CPM
Executive Counsel
1103#013

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Environmental Quality
Office of the Secretary**

Waste Expedited Permitting
(LAC 33:I.1801)(OS086)

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 Office of the Secretary regulations, LAC 33:I.1801 (OS086).

This Rule will change the application process and issuance of solid waste permits. This change will allow relatively minor solid waste permitting actions to be issued under the expedited permitting program found in LAC 3:I.Chapter 18. At the same time, this will also allow similar permits under the hazardous waste program to be expedited.

The basis of this Rule is to allow minor solid and hazardous waste permit actions to be issued in a more timely fashion while allowing the division to be able to more efficiently reduce the backlog of pending waste permit requests. 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 1. Office of the Secretary

**Subpart 1. Departmental Administrative Procedures
Chapter 18. Expedited Permit Processing Program
§1801. Scope**

A. - B.3. ...

4. Applications for initial permits, permit renewals, and permit modifications under the Solid Waste and Hazardous Waste programs are eligible for expedited permit processing with the following exceptions:

a. applications for initial permits or renewal permits pertaining to a landfill or landfarm are not eligible for expedited permit processing; and

b. major modification applications pertaining to a landfill or landfarm are not eligible for expedited permit processing.

B.5. - E.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014.5.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:1013 (June 2007), amended 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 OS086. Such comments must be received no later than May 4, 2011, at 4:30 p.m., and should be sent to Donald Trahan, Attorney Supervisor, Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to donald.trahan@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 OS086. These proposed regulations are available on the internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

Public Hearing

A public hearing will be held on April 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 Donald Trahan 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: Waste Expedited Permitting

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule change may result in a minimal increase in the Department of Environmental Quality administrative costs to prepare permits associated with the expedited permit processing program. However, these costs will be offset with the fee associated with the expedited permit processing program. The proposed rule will add solid waste and hazardous waste permits to the types of permits that are eligible for this program.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change may result in an indeterminable increase in revenue collections due to the receipt of expedited permit processing fees to DEQ associated with the expedited

permit processing program. Revenue collected through this fee will offset any increase in administrative costs associated with the program.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule will impact applicants who apply for the expedited permit process for solid waste or hazardous waste permits. It is not possible to provide a specific cost estimate because the applicant has the ability to limit the amount to be spent for the expedited process.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will have no effect on competition and employment.

Herman Robinson, CPM
Executive Counsel
1103#021

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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 proposes to amend 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 being amended and adopted 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:

§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. ...

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 5 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:

§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;
6. ...

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:

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.

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:

Family Impact Statement

The proposed Rule amendments have no know impact on family formation, stability and autonomy as described in R.S. 49:972.

Public Comments

Interested parties may submit written comments to Morgan Dampier, Chief Operating Officer, Louisiana State Board of Home Inspectors, 4664 Jamestown, Baton Rouge, LA, 70898-4868 or by facsimile to (225) 248-1335. Comments will be accepted through the close of business April 11, 2011. If it becomes necessary to convene a public hearing to receive comments in accordance with the Administrative Procedures Act, the hearing will be held on April 29, 2011 at 10 a.m. at the office of the State Board of Home Inspectors, 4664 Jamestown, Suite 220, Baton Rouge, LA.

Albert J. Nicaud
Board Attorney

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Licensing, Education, Standards of Practice and Code of Ethics

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The board expects minimal costs associated with the publication of the amendments and adopted rules. Licensees and the interested public will be informed of these rule changes via the board's regular newsletter, direct mailings, website posting or other means of communication at a minimal cost.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections of state or local governmental units as no increase in fees will result from the amendments.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There may be a minimal increase in costs to continuing education instructors and/or various education providers as a result of the proposed administrative rules. The proposed administrative rules provide for all continuing education instructors to submit information to the board such as: 1.) Course syllabus, 2.) Requested number of continuing education credit hours, 3.) Sign-in sheets, 4.) Certificates of completion. This additional information requirement could result in a minimal increase in costs. In addition, the proposed administrative rules allow for continuing education providers to offer online courses, which could result in increased costs to the specific continuing education provider.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed administrative rule could minimally increase competition among the various educational providers. The proposed administrative rule provides for professional trade organizations and accredited technical schools, with board approval, to be continuing education instructors. To the extent various trade organizations are approved as continuing education providers, increased competition with traditional continuing education providers, increased competition with traditional continuing education providers will result. However, the number of continuing education credits allowed from these organizations is limited.

Albert J. Nicaud
Board Attorney
1103#075

Evan Brasseur
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor Commission on Law Enforcement and Administration of Criminal Justice

Peace Officer Training (LAC 22:III.4703 and 4750)

In accordance with the provision of R.S. 40:2401 et seq., the Peace Officer Standards and Training Act, and R.S. 40:905 et seq., which is the Administrative Procedure Act, the Peace Officer Standards and Training Council hereby gives notice of its intent to promulgate rules and regulations relative to the training of peace officers.

Title 22

CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

Part III. Commission on Law Enforcement and Administration of Criminal Justice

Subpart 4. Peace Officers

Chapter 47. Standards and Training

§4703. Basic Certification

A. - C.3. ...

D. When a basic student injures themselves during a basic training course, the student must have the nature of the injury immediately documented. Should the injury later prevent the student from being tested on a basic training course requirement, then upon written request of the agency head, the student will have eight weeks from the time of the medical release to take and pass those course requirements, unless the time between the academy graduation and medical release exceeds a one year period. In that case, the student will be required to complete another basic training course.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 13:434 (August 1987), amended LR 25:663 (April 1999), LR 27:49 (January 2001), LR 28:475 (March 2002), LR 31:2008 (August 2005), LR 35:1235 (July 2009), LR 36:992 (May 2010), LR 37:

§4750. In Service Training & Certification

A. Firearms

1. Annual Requalification

a. To maintain firearm certification, an officer shall be required to requalify yearly on the POST firearms qualification course, demonstrating at least 80 percent proficiency. Scores shall be computed and verified by a POST certified firearms instructor.

b. If the period between qualifying exceeds 13 months for any reason, the officer will be required to successfully complete the pre-academy firearms course conducted by a POST certified firearms instructor, unless the officer had been in the military for more than five years and was exercising his veteran reemployment rights.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR:37:

Family Impact Statement

An analysis of the proposed Rule shows that it will have no impact on the family as described in R.S. 49:972.

Small Business Impact

An analysis of the proposed Rule shows that it will have no impact on small business as defined by Act 820 of 2008.

Public Comments

Interested persons may submit written comments on this proposed Rule no later than May 10th 9:30 a.m. to Bob Wertz, Peace Officer Standards and Training Council, Louisiana Commission on Law Enforcement, Box 3133, Baton Rouge, LA 70821.

Mr. Joey Watson
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Peace Officer Training

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There is no anticipated direct material effect on state and local governmental expenditures. Although the proposed administrative rule reduces the firearms requalification timeframe from 18 months to 13 months, there will likely be no increase in costs to law enforcement entities because the majority of law enforcement personnel requalify annually. Any increase in cost to law enforcement entities is not anticipated to be material.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change will have no impact on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed administrative rule requires law enforcement personnel to requalify every 13 months as opposed to every 18 months. The cost to requalify will not impact the law enforcement personnel, as these costs are typically included within the annual operating budget of the law enforcement entity.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no effect on competition or employment in the public or private sector as a result of this rule change.

Joseph M. Watson
Executive Director
1103#067

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor Crime Victims Reparations Board

Compensation to Victims
(LAC 22:XIII. 103, 301, and 503)

In accordance with the provisions of R.S. 49:950 et seq., which is the Administrative Procedure Act, and R.S. 46:1801 et seq., which is the Crime Victims Reparations Act, the Crime Victims Reparations Board hereby gives notice of its

intent to promulgate rules and regulations regarding the awarding of compensation to applicants.

Title 22

CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

Part XIII. Crime Victims Reparations Board

Chapter 1. Authority and Definitions

§103 Definitions

* * *

Pecuniary Loss—amount of expense reasonably and necessarily incurred by reason of personal injury as a consequence of death, or a catastrophic property loss, and includes:

- a. for personal injury:
 - i. ...
 - ii. actual loss of past earnings and anticipated loss of future earnings because of a disability resulting from the personal injury; or the receipt of medically indicated services for a minor child related to the personal injury;
 - iii. care of a child or dependent;
 - iv. counseling or therapy for the parent(s) or sibling(s) of a child who is the victim of a sexual crime;
 - v. Loss of support for a child victim of a sexual crime not otherwise compensated for as a pecuniary loss for personal injury;
- b. as a consequence of death:
 - i. - v. ...
 - vi. crime scene cleanup;
- c. - d. ...

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1801 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Crime Victims Reparations Board, LR 20:538 (May 1994), amended LR 22:709 (August 1996), LR 23:861 (July 1997), LR 24:327 (February 1998), LR 37:

Chapter 3. Eligibility and Application Process

§301. Eligibility

A. To be eligible for compensation, an individual must have suffered personal injury, death or catastrophic property loss as a result of a violent crime.

1. Victim Conduct and Behavior

a. The Crime Victims Reparations Board may vote to deny or reduce an award to a claimant who is a victim, or who files an application on behalf of a victim, when any of the following occurs.

i. The victim was assisting, attempting, or engaging in an illegal activity that substantially caused the injuries that are the basis for the claim.

ii. The victim committed a felony offense or was serving a sentence for a felony offense committed within five years prior to the date of victimization or five years subsequent to serving the sentence.

iii. The victim contributed to or provoked the offense through his/her own misconduct.

b. Seat Belt Use by Vehicle Occupants

i. As Louisiana requires all vehicle occupants to use seat belts, victims not wearing a seat belt and injured or killed by a driver in violation of R.S. 14:98 (DWI), hit and run, or other intentional acts will have their award reduced, if found eligible otherwise.

ii. The total maximum award allowed under current policy will be reduced by 50 percent.

2. - 3.g....

AUTHORITY NOTE: Promulgated in accordance with R. S. 46:1801 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Crime Victims Reparations Board, LR 20:538 (May 1994), amended LR 22:709 (August 1996), LR 31:2009 (August 2005), LR 35:65 (January 2009), LR 36:2278 (October 2010), LR 37:

Chapter 5. Awards

§503. Limits on Awards

A. - M.2. ...

N. Crime Scene Cleanup

1. Crime scene cleanup means the removal or attempted removal of blood, stains, odors, broken glass, impurities or other debris caused by the crime or the processing of the crime scene where the crime occurred.

2. Expenses for crime scene cleanup may not exceed total costs of \$ 2500.

3. Types of allowable expenses for clean up include:

- a. equipment rental;
- b. disinfecting and cleaning supplies;
- c. professional cleaning services insured for that purpose.

4. Expenses for crime scene cleanup cannot be used for:

- a. property repair;
- b. replacement of personal property;
- c. costs not directly billed to victim and/or claimant.

O. Loss of Support Minor in Sexual Crimes

1. Loss of support may be paid on behalf of a minor victim of a sexual offense if the offender was providing support through employment or a benefits program before the date the crime was committed.

2. Claimant qualifications:

- a. must be a parent, or legal guardian of the minor child(ren);
- b. must provide documented proof that offender supported the home and minor child;
- c. is only eligible if the offender is incarcerated.

3. The board may award loss of support up to:

- a. \$7500 maximum per victim;
- b. maximum amount per week for loss of support is the same authorized for lost wages in §503.D.4.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1801 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Crime Victims Reparations Board, LR 20:539 (May 1994), amended LR 22:710 (August 1996), LR:37:

Family Impact Statement

There will be no impact on family earnings or the family budget as set forth in R.S. 49:972.

Public Comments

Interested persons may submit written comments on this proposed rule no later than April 20, 2011, at 5 p.m. to the attention of Bob Wertz, Criminal Justice Policy Planner, Louisiana Commission on Law Enforcement and Administration of Criminal Justice, P.O. Box 3133, Baton Rouge, LA 70821.

Public Hearing

A hearing on the proposed Rule will be held on May 10, 9:30 a.m. at the Louisiana Commission on Law Enforcement, Mobility Conference Room, First Floor, Galvez Bldg., Baton Rouge, LA .

Lamarr Davis
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Compensation to Victims**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
The proposed administrative rule change will likely result in an indeterminable net increase in expenditures from the statutorily dedicated Crime Victims Reparation Fund. Pursuant to Act 772 of the 2010 Regular Legislative Session, claim benefits have been expanded to include crime scene cleanup and for assistance to minors who are victims of a sexual offense. However, the proposed administrative rule also eliminates the eligibility of crime victims convicted of a felony offense within five years of application.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
Implementation of the proposed rule will not impact revenue collections of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
Implementation of the proposed rule will impact those victims who have been convicted of a felony offense within five years prior to or subsequent to the victimization and makes them ineligible for a reparation award. The adoption of the rule seeks to clarify the situations in which applicants for reparations would not be approved. In addition, claim benefits now include expenses for crime scene cleanup and for assistance to minors who are victims of a sexual offense.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There is no effect on competition or employment in the public or private sector as a result of the proposed rule change.

Joseph Watson
Executive Director
1103#066

Evan Brasseaux
Staff Director
Legislative Fiscal Office

**NOTICE OF INTENT
Office of the Governor
Department of Veterans Affairs**

Military Family Assistance Program (LAC 4:VII.961-987)

The Louisiana Department of Veterans Affairs hereby gives notice that it intends to adopt rules and regulations pertaining to the Military Family Assistance Board and the Military Family Assistance Fund, in accordance with the provisions of Act 676 of the 2008 Regular Legislative Session and Act 256 of the 2010 Regular Legislative Session.

Title 4

ADMINISTRATION

Part VII. Governor’s Office

Chapter 9. Veterans Affairs

Subchapter D. Military Family Assistance Program

§961. Authority

A. Rules and regulations are hereby established by the Military Family Assistance Board by order of the Military Family Assistance Act, R. S. 46: 120 et seq., Act 151 of the 2005 Louisiana Legislature and amended by Act 676 of the 2008 Louisiana Legislature and Act 256 of the 2010 Louisiana Legislature.

AUTHORITY NOTE: Promulgated in accordance with R. S. 46:121 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Department of Veterans Affairs, LR 37:

§963. Construction of Regulations; Severability

A. Nothing contained in these rules shall be so construed as to conflict with any provision of the Act or any other applicable statute. If any provision of any rule or regulation is held invalid by any state or federal court in Louisiana, such provision shall be deemed severed from the rule and the court’s finding shall not be construed to invalidate any of the other provisions of the rules.

AUTHORITY NOTE: Promulgated in accordance with R. S. 46:121 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Department of Veterans Affairs, LR 37:

§965. Definitions

A. The following terms as used in these regulations, unless the context otherwise requires or unless redefined by a particular part hereof, shall have the following meanings:

Activated Military Personnel or Activated Military Person—a person domiciled in Louisiana for civilian purposes, names Louisiana as home of residence (HOR) for military purposes, and who is a member of a reserve component of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, including the Louisiana National Guard, and called to active federal service in excess of 30 days or who is a member of the Louisiana National Guard and called to active state service pursuant to Louisiana R.S. 29:7.

Application—a written request for financial assistance from the Military Family Assistance Program made on the form captioned Military Family Assistance Program Request Form, together with documents related thereto.

Approval Authority—the third party administrator for all need-based claims of \$1500 or less; the fund committee for all need-based claims of greater than \$1500 up to \$2500; and the board for all need-based claims of greater than \$2500. The fund committee and the board are the approval authority for all claims for one-time lump sum payments and all claims appealed by an eligible applicant.

Board—the Louisiana Military Family Assistance Board.

Claimant—an eligible applicant.

Eligible Applicant—activated military personnel or a family member of activated military personnel.

Family Member of Activated Military Personnel—the primary next of kin or an immediate family member.

Final Appeal—an appeal to the Louisiana Military Family Assistance Board.

Fund Committee—the committee comprised of three Board members appointed by the chairman of the board to assist in administering the Louisiana Military Family Assistance Program which committee shall also serve as an appellate body for all claims of \$1500 or less before a final appeal is made to the full board.

Immediate Family Member—with respect to an activated military person:

- a. spouse;
- b. a natural child, adopted child, step child, or illegitimate child, if acknowledged by the person or parenthood has been established by a court of competent jurisdiction, except that if such child has not attained the age of 18 years, the term means a surviving parent or legal guardian of such child;
- c. any other person claimed as a dependent on the federal income tax of the activated military person;
- d. a biological or adoptive parent, unless legal custody of the person by the parent has been previously terminated by reason of a court decree or otherwise under law and not restored;
- e. a brother or sister of the person, if such brother or sister has attained the age of 18 years; or
- f. any other person, if such person was given sole legal custody of the person by a court decree or otherwise under law before the person attained the age of 18 years and such custody was not subsequently terminated before that time.

Outreach—activities directed at improving or strengthening veteran initiatives, activities or problems.

Third Party Administrator—the Louisiana Department of Veterans Affairs Benefits Division.

AUTHORITY NOTE: Promulgated in accordance with R. S. 46:121 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Department of Veterans Affairs, LR 37:

§967. Eligibility

A. To be eligible for a grant from the Louisiana Military Family Assistance Program, an individual must be either an activated military person or the family member of an activated military person.

B. The activated military person must have served in excess of 30 consecutive days of active duty since September 11, 2001, before the activated military person or any family member may submit an application for assistance to the Louisiana Military Family Assistance Program.

C. The Military Family Assistance Program is a payer of last resort. All applicants shall seek assistance from other available sources prior to making application to the Military Family Assistance Program. Other available sources include, but are not limited to, Army Emergency Relief, Air Force Aid Society, Navy-Marine Corps Relief Society, Coast Guard Mutual Assistance, Salvation Army, American Red Cross, and Veterans' Emergency Assistance.

D. The approval authority may, in its sole discretion, waive the requirement to seek assistance from other available sources when unusual or exigent circumstances make such application impractical or unlikely to produce results in a timely manner or when the applicant shows that

the circumstances are such that other potential sources of funds are inapplicable to the particular circumstances.

E. Requests for assistance from the Military Family Assistance Fund shall not be bifurcated.

AUTHORITY NOTE: Promulgated in accordance with R. S. 46:121 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Department of Veterans Affairs, LR 37:

§969. Application Process

A. Eligible Applicant Responsibilities

1. All requests for assistance shall be made through a completed Louisiana Military Family Relief Assistance Program Request Form.

2. An application is not complete unless it is signed by the applicant and contains all information requested by the form.

3. All applicants shall provide all additional information requested by the Military Family Assistance Board, the fund committee, or the third party administrator. Failure to provide additional requested information may result in the denial of the application.

4. Applications for assistance from the Military Family Assistance Program shall include copies of applications for other types of assistance filed by the applicant.

5. Applications, together with all supporting documents, shall be mailed to: Department of Veterans Affairs, Attn: MFA Third Party Administrator, P.O. Box 94095, Baton Rouge, LA 70804-9095.

6. To expedite the application process, applications and supporting documents may be sent by facsimile transmission to MFA third party administrator. If the application and supporting documents are faxed, an application with the applicant's original signature must also be mailed, along with all supporting documents, to the third party administrator. The approval authority shall not approve or pay a request for assistance until an original application is received.

7. An application for assistance from the Military Family Assistance Fund shall be considered made as of the date that it is received by the third party administrator, provided that for all applications received by facsimile transmission, an application with the applicant's original signature is subsequently received by the Third Party Administrator.

8. If an individual acts on behalf of an eligible applicant in preparing and submitting the application, a copy of a fully executed power of attorney authorizing the individual preparing and submitting the application to act on the eligible applicant's behalf must be submitted as an attachment to the application.

9. The deadline to file an application for assistance from the Military Family Assistance Fund is six months from the date of discharge from active duty.

AUTHORITY NOTE: Promulgated in accordance with R. S. 46:121 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Department of Veterans Affairs, LR 37:

§971. Types of Grants; Restrictions on Awards

A. Three types of grants may be made by the Military Family Assistance Fund:

1. grants for need-based assistance;
2. grants for one-time lump sum awards; and

3. grants for transportation and other related costs as authorized by the board.

B. No request shall be approved by the board, the fund committee, or the third party administrator that does not meet the requirements of the law or the rules.

C. The request of an eligible applicant may be denied if the activated military personnel is not in good standing with the appropriate military unit at the time the application is submitted or the time payment is made.

D. The board may disapprove a request for assistance if the board determines that the grant of an award under the facts and circumstances of a particular case is not in the best interests of the board or the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R. S. 46:121 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Department of Veterans Affairs, LR 37:

§973. Award Amounts

A. The maximum dollar amount that may be awarded on behalf of an activated military person for a need-based claim per 12 month period is \$10,000.

B. The maximum dollar amount for need-based claims shall apply per active duty order.

C. One uniform maximum dollar amount that may be awarded on behalf of an activated military person for a one-time lump sum award shall be \$700. With respect to one-time lump sum awards, the following shall apply:

1. An eligible applicant may be awarded an additional one-time lump sum award for cost directly related to a service related death or an injury with a greater than 50 percent residual disability.

2. One-time lump sum awards are addition to, and not in lieu of, need-based awards.

3. A one-time lump sum award may be made only when extenuating circumstances are present. Extenuating circumstances include, but are not limited to:

a. the circumstance in which the injured military person is recuperating in a location away from home that necessitates travel by family members to visit with the injured military person. Costs associated with transportation, lodging, meals, and other related matters not covered by any other source to enable family members to visit an activated military person with a service related injury with a greater than fifty percent residual disability, whether the extent of the disability has been determined at the time application is made or is reasonably anticipated to result in a greater than fifty percent residual disability at the time application is made, may be requested;

b. the circumstance in which the funeral of an activated military person necessitates travel by family members to attend the funeral. Costs associated with transportation, lodging, meals, and other related matters not covered by any other source to enable family members to attend the funeral of an activated military person may be requested;

c. the circumstance in which the absence of family members to visit the injured activated military person or attend the funeral of the activated military person creates financial needs for the care of a home, pets, children, or others when the financial need is not covered by any other source;

d. such other extenuating circumstances as may be determined on a case-by-case basis by the fund committee.

4. Family members of activated military personnel who are listed as missing in action or prisoner of war by the U.S. Department of Defense shall be eligible for the lump sum award. The activated military person must be listed as missing in action or a prisoner of war on or after September 11, 2001.

D. With respect to grants for transportation and other related costs of activated military personnel, the following shall apply.

1. One transportation request shall be approved per person per period of mobilization, and pay no greater than \$500 per applicant.

2. The utilization of the lowest cost fare and group rates with other applicants, where practicable, shall be encouraged.

3. The awarded amount shall be subtracted from the maximum dollar amount of \$10,000 per applicant per 12-month period.

4. Consideration for assistance will be limited to activated military personnel whose deployment is for overseas only.

5. Requests for assistance must have the approval from the adjutant general and/or commanding officer.

6. The rank of the applicant will be considered.

AUTHORITY NOTE: Promulgated in accordance with R. S. 46:121 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Department of Veterans Affairs, LR 37:

§975. Minimum Funding Levels; Reserve Level; Calculation of Funds Available for Payment of One-Time Lump Sum Awards

A. The Military Family Assistance Fund shall have a minimum of \$150,000 on deposit for the Military Family Assistance Program to become operational.

B. At all times the fund shall have a reserve of a minimum of \$15,000.

C. For fiscal year 2006/2007, the maximum percentage of the Military Family Assistance Fund that may be directed to one-time lump sum awards shall not exceed five percent. The percentage shall be based on the amount of funds on deposit in the Military Family Assistance Fund as of the date of the approval of these emergency rules.

D. For fiscal year 2007/2008 and each succeeding fiscal year, the maximum percentage of the Military Family Assistance Fund that may be directed to one-time lump sum awards shall not exceed 20 percent. This percentage shall be based on the amount of funds on deposit in the Military Family Assistance Fund as of the first day of the fiscal year.

E. Award amounts directed to transportation and other related costs of activated military personnel shall not exceed 30 percent of the funds on deposit in the Military Family Assistance Fund on the first day of the fiscal year.

AUTHORITY NOTE: Promulgated in accordance with R. S. 46:121 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Department of Veterans Affairs, LR 37:

§977. Third Party Administrator

A. The third party administrator shall receive all need-based applications, all applications for one-time lump sum assistance, and all applications for transportation and other related costs assistance.

B. The third party administrator is authorized to review, process, approve and remit payment on all need-based

applications of \$1500 and less. In no event shall the third party administrator remit payment on any request that exceeds \$1500 without the prior express written approval of the board or the fund committee.

C. The third party administrator is authorized to disapprove need-based applications for \$1500 or less if the eligible applicant fails to show that all requirements set forth in the law and the rules are met. The eligible applicant has the right to appeal such disapproval to the fund committee.

D. With respect to need-based applications of \$1500 and less, the third party administrator is authorized to approve the claim in part and disapprove the claim in part. The eligible applicant has the right to appeal the third party administrator's disapproval of any part of its need-based claim to the fund committee.

E. For all need-based applications received, regardless of the dollar amount of the request, the third party administrator shall make a determination on the following issues:

1. that all awards are on behalf of activated military personnel;
2. that all awards are made pursuant to a claim that is made by an eligible applicant;
3. that all awards are need-based. The third party administrator may consider a claim need-based if all of the following apply:
 - a. the funds are requested for necessary expenses incurred or to be incurred;
 - b. the necessary expenses created or will create an undue hardship on the activated military person or family member;
 - c. the undue hardship is directly related to the activation of the military person;
 - d. the activated military person or family member does not have reasonable and timely access to any other funding source;
 - e. payment of the claim does not supplant other available public or private funds; and
 - f. the Louisiana Military Family Assistance Fund is the eligible applicant's last resort.

F. For all one-time lump sum applications, the third party administrator shall make an initial determination of whether extenuating circumstances exist that support approval of the application.

G. After making the determinations set forth above, the third party administrator shall, for all need-based applications requesting assistance in an amount greater than \$1500 and for all one-time lump sum applications, forward the application together with all supporting documents and the determination to the fund committee for further review and processing, approval or disapproval, and payment by the third party administrator in the event of approval.

H. If the third party administrator approves a request of \$1500 or less, it shall determine when the claim shall be paid, the amount of payment, to whom the payment shall be made, and such other matters as it deems necessary and appropriate.

I. The third party administrator shall make a written determination on all applications for assistance as soon as possible.

1. In no event shall the time period between receipt of the completed application by the third party administrator

and release of the written determination by the third party administrator exceed 30 calendar days.

2. The written determination shall be:

- a. to approve the claim;
- b. to disapprove the claim;
- c. to request additional information or documentation regarding the claim; or
- d. to schedule a meeting with the eligible applicant to discuss the claim.

J. If the third party administrator schedules a meeting, it shall make a determination within 15 days following the date that such meeting actually takes place. The determination shall be to either approve or disapprove the claim.

K. If the third party administrator fails to make a written determination within the time periods set forth in these rules, the claim shall be considered disapproved. The eligible applicant may then lodge an appeal within the time delays set forth by statute.

L. The third party administrator shall determine that sufficient funds are on deposit for the payment of all approved claims.

M. The third party administrator shall notify the fund committee and the board in writing any time approved applications will cause the Military Family Assistance Fund's unobligated balance to drop to within \$15,000 of its minimum reserve level.

N. With respect to any application that creates a conflict of interest for the third party administrator, the third party administrator shall refer the application to the fund committee for consideration and action.

O. The third party administrator shall notify the Board if it appears that an application is submitted in violation the law and these rules.

P. The third party administrator shall submit such reports to the Fund Committee and the Board as are requested.

Q. The third party administrator may refer need-based requests for assistance to the fund committee for determination if the third party administrator suspects that the grant of an award under the facts and circumstances of a particular case may not be in the best interests of the Board or the state of Louisiana.

R. The third party administrator's expenses in the administration of the program shall be paid from the balance of the Military Family Assistance Fund, but shall not exceed 5 percent of the total amount deposited into the fund in the previous fiscal year.

AUTHORITY NOTE: Promulgated in accordance with R. S. 46:121 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Department of Veterans Affairs, LR 37:

§979. Fund Committee

A. The Fund Committee shall receive determinations from the Third Party Administrator and make decisions on all need-based applications of greater than \$1500 up to \$2500 and all applications for one-time lump sum assistance.

B. The fund committee shall sit as a board of appeals for the third party administrator's disapproval of all or any part of a need-based application for \$1500 or less. If the fund committee disapproves the eligible applicant's request for assistance, the eligible applicant may appeal the fund committee's disapproval to the military family assistance board.

C. The board chairman shall designate the members of the fund committee and shall select alternates to act on their behalf.

D. The fund committee shall receive the third party administrator's monthly report on applications received and claims paid. The fund committee shall determine the payment of claims when the Military Family Assistance Fund falls to within \$15,000 of its minimum funding level.

E. The fund committee shall instruct the third party administrator with respect to the receipt and processing of all applications for assistance from the fund if the fund falls to within \$15,000 of its minimum funding level.

F. The fund committee may refer need-based requests for assistance and requests for one-time lump sum awards to the board for determination if the Fund Committee suspects that the grant of an award under the facts and circumstances of a particular case may not be in the best interests of the board or the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R. S. 46:121 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Department of Veterans Affairs, LR 37:

§981. The Board and Chairman of the Board

A. If the board suspects that an application is submitted in violation of the provisions of the law and these rules, it shall refer such application to the appropriate district attorney's office.

B. The board shall provide an annual report to the Joint Legislative Committee on the Budget on the overall activities of the program and any recommendations for consideration.

C. The chairman of the board shall appoint three board members and alternates to serve on the fund committee.

D. The board shall sit as a final board of appeals for all applications disapproved by the fund committee. An eligible applicant shall have no right to appeal the final decision of the board to any other court, tribunal, or hearing body.

E. The board shall make determinations on requests for assistance brought before the board.

F. The board shall exercise oversight of the activities of the third party administrator and the fund committee.

G. The chairman of the board shall provide for state administration of the program, the cost of which shall be paid from the balance of the Military Family Assistance fund, not to exceed 5 percent of the total amount deposited into the fund in the previous fiscal year.

H. The Secretary of the Louisiana Department of Veterans Affairs may direct up to 10 percent of the total amount deposited into the fund in the previous fiscal year to be spent toward veteran outreach activities.

AUTHORITY NOTE: Promulgated in accordance with R. S. 46:121 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Department of Veterans Affairs, LR 37:

§983. Appeals

A. An eligible applicant may appeal the third party administrator's disapproval of all or any part of the request for assistance to the fund committee within thirty days of the receipt of the written determination disapproving the claim.

B. The fund committee is authorized by these rules to decline to consider any appeal that is not timely filed.

C. An eligible applicant may appeal the fund committee's disapproval of claim to the board within 30

days of the receipt of the written determination disapproving the claim.

D. The board is authorized by these rules to decline to consider any appeal that is not timely filed.

E. The decision of the board on a request for assistance shall be final. The third party administrator, the fund committee, and the eligible applicant shall not have a right to appeal the final decision of the board to any court, tribunal, or hearing body of any kind.

F. The eligible applicant may request reconsideration of a disapproval of claim by the third party administrator, the fund committee, or the board. The request for reconsideration shall be made within 30 days of the date of the eligible applicant's receipt of the written determination disapproving the claim. The request for reconsideration shall be made to the approval authority that disapproved the request for assistance.

AUTHORITY NOTE: Promulgated in accordance with R. S. 46:121 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Department of Veterans Affairs, LR 37:

§985. Withdrawal of Applications

A. An eligible applicant and anyone properly acting on behalf of an eligible applicant shall have the right to withdraw the application at any time prior to final disposition of the application by the third party administrator, the fund committee or the board.

AUTHORITY NOTE: Promulgated in accordance with R. S. 46:121 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Department of Veterans Affairs, LR 37:

§987. Waivers

A. Prior to the approval of a claim, applications and the identity of eligible applicants and their related military personnel shall be confidential unless expressly waived by the eligible applicant in writing. The filing of an appeal before the fund committee or the board shall be considered a waiver of the identity of eligible applicants and their related military personnel.

B. Once a claim is approved, the identity of the eligible applicant, related activated military personnel, and any person filing the application on behalf of the eligible applicant, and the amount approved shall be public record.

C. Applications, the identify of applicants and their related military personnel, and all records of the board, the fund committee and the third party administrator related thereto, shall be available prior to any approval of the application, to necessary parties including but not limited to, the legislative auditor, the legislative oversight committee for rules and annual reports, and such other parties as necessary for prudent administration of the Military Family Assistance Program and verification of elements of the application.

D. The board, the fund committee, and the third party administrator are expressly authorized to make public data concerning the number of applications received, the amount of claims approved, the geographic areas of the state from which such applications are received and approved, the number of disapproved applications, and the amount of funds in the Louisiana Family Military Assistance Fund.

AUTHORITY NOTE: Promulgated in accordance with R. S. 46:121 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Department of Veterans Affairs, LR 37:

Family Impact Statement

The proposed Rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972.

Public Comments

Interested persons are invited to submit written comments by 4:30 p.m., April 30, 2011, to Lane A. Carson, Secretary; Department of Veterans Affairs; PO Box 94095, Capitol Station; Baton Rouge, LA 70804-9095.

Lane A. Carson
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Military Family Assistance Program

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule change, which impacts the Military Family Assistance Fund, places in rule the provisions of Act 676 of the 2008 Regular Legislative Session and Act 256 of the 2010 Regular Legislative Session. Pursuant to Act 676, the Military Family Assistance Fund has been moved from the control of the Department of Social Services (now the Department of Child and Family Services) to the jurisdiction of the Department of Veterans Affairs. In addition, Act 676 provides for the fund to pay for transportation and other related costs of activated military personnel as authorized by the Louisiana Military Family Assistance Board. Pursuant to Act 256 of the 2010 Regular Legislative Session, monies in the fund shall be used to conduct outreach activities for veterans of the United States Armed Forces. The additional benefits provided through the fund will likely result in an indeterminable increase in expenditures, which is funded by donations and tax payments (individual income, sales, and corporate taxes).

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed 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 proposed rule change provides for activated military personnel or a family member of an activated military person to request grants for the transportation and other related costs as authorized by the Louisiana Military Family Assistance Board. The Military Family Assistance Fund currently provides funds to eligible persons to help defray the cost of necessities such as food, housing, and medical services.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will have no effect on competition and employment.

David LaCerte
Deputy Secretary
1103#074

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Office of the Governor
Office of Financial Institutions**

Supervision of Salesmen and Investment Adviser
Representatives (LAC 10:XIII.1901)

In accordance with the Louisiana Securities Law, R.S. 51:701 et seq., and particularly, R.S. 51:704(A)(9), has amended, and the Administrative Procedure Act, R.S. 49:950 et seq., the Commissioner of Financial Institutions hereby gives his Notice of Intent to adopt LAC 10:XIII.19, a Rule to provide guidelines for the supervision of salesmen and investment adviser representatives.

Title 10

**FINANCIAL INSTITUTIONS, CONSUMER CREDIT,
INVESTMENT SECURITIES AND UCC**

Part XIII. Investment Securities

Subpart 1. Securities

**Chapter 19. Supervision of Salesmen and Investment
Adviser Representatives**

**§1901. Supervision of Salesmen and Investment Adviser
Representatives**

A. Every dealer registered or required to be registered pursuant to R.S. 51:703(A)(1), every investment adviser registered or required to be registered pursuant to R.S. 51:703(A)(2), every investment adviser notice filed pursuant to R.S. 51:703(D)(2), and officers, directors, and partners thereof, shall exercise diligent supervision over all the securities activities of its salesmen and investment adviser representatives.

B. As part of their responsibility under this Rule, every dealer or investment adviser shall establish, maintain, and enforce written supervisory procedures that may be reasonably expected to prevent and detect any violations of the Louisiana Securities Law and rules promulgated thereunder. A copy of these supervisory procedures shall be kept at all times, in each business office. At a minimum, these procedures shall address the following areas:

1. the supervision of every salesman and investment adviser representative by a designated supervisor possessing sufficient training and experience to carry out their assigned supervisory responsibilities;

2. the prior review and written approval by the designated supervisor of the opening of each new customer account;

3. the frequent examination by the designated supervisor of all customer accounts to detect and prevent irregularities or abuses;

4. the prompt review and written approval by the designated supervisor of all securities transactions and all correspondence pertaining to the solicitation or execution of all securities transactions;

5. the prior review and written approval by the designated supervisor of the delegation by any customer of discretionary authority with respect to his account, and the prompt written approval of each discretionary order on behalf of that account; and

6. the prompt review and written approval by the designated supervisor of the handling of all customer complaints.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:704(A)(9).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 37:

Family Impact Statement

Pursuant to R.S. 49:972, and prior to adoption of the proposed Rule LAC 10:XIII.1901, Supervision of Salesmen and Investment Advisers Representatives, the Office of Financial Institutions considered the impact of the proposed Rule, and found that the proposed Rule, if adopted, would have no effect on the stability of or the functioning of the family, the authority and rights of parents regarding the education and supervision of their children, family earning and family budget, the behavior and personal responsibility of children, or the ability of the family or a local government to perform the function as contained in the proposed Rule.

Small Business Impact Statement

The impact of the proposed Rule on small businesses as defined in R.S. 49:965.4(4) in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant impact on small businesses.

Public Comments

All interested persons are invited to submit written comments on this proposed Rule, no later than 4:30 p.m., April 20, 2011, to Rhonda Reeves, Deputy Commissioner of Securities, P.O. Box 94095, Baton Rouge, LA, 70804-9095, or by hand delivery to the Office of Financial Institutions, 8660 United Plaza Boulevard, Second Floor, Baton Rouge, LA.

John Ducrest
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Supervision of Salesmen and Investment Adviser Representatives

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There is no anticipated direct material effect on state or local governmental expenditures as a result of the proposed administrative rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no anticipated direct material effect on state or local governmental revenues as a result of the proposed administrative rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There may be minimal workload adjustments and additional documentation requirements for some broker-dealer and investment adviser firms as a result of the proposed administrative rule. Pursuant to Act 274 of the 2008 Regular Legislative Session, registration of a broker-dealer, investment adviser, salesman, or investment adviser representative may be suspended or revoked if the registrant has failed to reasonably supervise any salesman or investment adviser representative for whom he has supervisory responsibility. The proposed

administrative rule establishes the criteria for the required supervision as per Act 274.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated direct material effect on competition and employment as a result of the proposed administrative rule.

John Ducrest
Commissioner
1103#059

Evan Brasseax
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Office of the Governor
Public Defender Board**

Trial Court Performance Standards for Attorneys
Representing Children in Delinquency
(LAC 22:XV.Chapter 13 and 15)

The Public Defender Board, a state agency within the Office of the Governor, proposes to adopt LAC 22:XV.Chapter 13 and LAC 22:XV.Chapter 15, as authorized by R.S. 15:148. These proposed rules are promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Act 307 of the 2007 Regular Session of the Louisiana Legislature directed the Public Defender Board to adopt rules creating mandatory: 1) statewide public defender standards and guidelines that require public defender services to be provided in a manner that is uniformly fair and consistent throughout the state; and 2) qualification standards for public defenders that ensure that public defender services are provided by competent counsel. Said standards are to ensure that public defenders are qualified to handle specific case types, taking into consideration the level of education and experience that is necessary to competently handle certain cases and case types, including representation of children in delinquency cases. In compliance with the directives of Act 307, the Public Defender Board proposes to adopt these standards for trial court performance for attorneys representing children in delinquency cases.

Title 22

CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

Part XV. Public Defender Board

Chapter 13. Trial Court Performance Standards for Attorneys Representing Children in Delinquency—Detention through Adjudication

§1301. Purpose

A. The standards for attorneys representing children in delinquency proceedings are intended to serve several purposes. First and foremost, the standards are intended to encourage district public defenders, assistant public defenders and appointed counsel to perform to a high standard of representation and to promote professionalism in the representation of children in delinquency proceedings.

B. The standards are also intended to alert defense counsel to courses of action that may be necessary, advisable, or appropriate, and thereby to assist attorneys in deciding upon the particular actions to be taken in each case to ensure that the client receives the best representation possible. The standards are further intended to provide a

measure by which the performance of district public defenders, assistant public defenders and appointed counsel may be evaluated, including guidelines for proper documentation of files to demonstrate adherence to the standards, and to assist in training and supervising attorneys.

C. The language of these standards is general, implying flexibility of action that is appropriate to the situation. In those instances where a particular action is absolutely essential to providing quality representation, the standard use the word "shall." In those instances where a particular action is usually necessary to providing quality representation, the standards use the word "should." Even where the standards use the word "shall," in certain situations the lawyer's best informed professional judgment and discretion may indicate otherwise.

D. These standards are not criteria for the judicial evaluation of alleged misconduct of defense counsel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1303. Obligations of Defense Counsel

A. The primary and most fundamental obligation of the attorney representing a child in a delinquency case is to provide zealous and effective representation for his or her client at all stages of the process. The defense attorney's duty and responsibility is to promote and protect the expressed interests of the child. Attorneys also have an obligation to uphold the ethical standards of the Louisiana Rules of Professional Conduct, to act in accordance with the Louisiana Rules of the Court, and to properly document case files to reflect adherence to these standards.

B. The attorney who provides legal services for a juvenile client owes the same duties of undivided loyalty, confidentiality and zealous representation to the child client as is due to an adult client. The attorney's personal opinion of the child's guilt is not relevant to the defense of the case.

C. The attorney should communicate with the child in a manner that will be effective, considering the child's maturity, intellectual ability, language, educational level, special education needs, cultural background, gender, and physical, mental and emotional health. If appropriate, the attorney should file a motion to have a foreign language or sign language interpreter appointed by the court and present at the initial interview and at all stages of the proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1305. Child's Expressed Preferences

A. The attorney should represent the child's expressed preferences and follow the juvenile client's direction throughout the course of litigation. In addition, the attorney has a responsibility to counsel the child and advise the client as to potential outcomes of various courses of action. The attorney should refrain from the waiving of substantial rights or the substitution of his or her own view or the parents' wishes for the position of the juvenile client. The use of the word "parent" hereafter refers to the parent, guardian, custodial adult or person assuming legal responsibility for the juvenile.

B. Considerations of personal and professional advantage or convenience should not influence counsel's advice or performance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1307. Scope of Representation

A. Certain decisions relating to the conduct of the case are ultimately for the child and other decisions are ultimately for the attorney. The child, after full consultation with counsel, is ordinarily responsible for determining:

1. the plea to be entered at adjudication;
2. whether to accept a plea agreement;
3. whether to participate in a diversionary program;
4. whether to testify on his or her own behalf; and
5. whether to appeal.

B. The attorney should explain that final decisions concerning trial strategy, after full consultation with the child and after investigation of the applicable facts and law, are ultimately to be made by the attorney. The client should be made aware that the attorney is primarily responsible for deciding what motions to file, which witnesses to call, whether and how to conduct cross-examination, and what other evidence to present. Implicit in the exercise of the attorney's decision-making role in this regard is consideration of the child's input and full disclosure by the attorney to the client of the factors considered by the attorney in making the decisions.

C. If a disagreement on significant matters of tactics or strategy arises between the lawyer and the child, the lawyer should make a record of the circumstances, his or her advice and reasons, and the conclusion reached. This record should be made in a manner that protects the confidentiality of the attorney-client relationship.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1309. Basic Competency in Juvenile Proceedings

A. Before agreeing to defend a juvenile client, an attorney has an obligation to make sure that he or she has sufficient time, resources, knowledge and experience to offer quality representation to the child. Before an attorney defends a juvenile client, the attorney should observe juvenile court, including every stage of a delinquency proceeding, and have a working knowledge of juvenile law and practice.

B. Prior to representing a juvenile client, at a minimum, the attorney should receive training or be knowledgeable in the following areas:

1. relevant federal and state statutes, court decisions and the Louisiana court rules, including but not limited to:
 - a. Louisiana Children's Code and Code of Criminal Procedure;
 - b. Louisiana statutory chapters defining criminal offenses;
 - c. Louisiana Rules of Evidence;
 - d. Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 et seq.;

e. Family Education Rights Privacy Act (FERPA), 20 U.S.C. §1232g;

f. Health Insurance Portability and Accountability Act of 1996 (HIPPA), P.L., 104-192 §264, 42 U.S.C. §1320d-2 (in relevant part);

g. *Louisiana Administrative Code*, Title 28, Part XLIII (Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act) and Part CI (Bulletin 1508, Pupil Appraisal Handbook);

h. state laws concerning privilege and confidentiality, public benefits, education and disabilities; and

i. state laws and rules of professional responsibility or other relevant ethics standards;

2. overview of the court process and key personnel in the delinquency process, including the practices of the specific judge before whom a case is pending;

3. placement options for detention and disposition;

4. trial and appellate advocacy;

5. ethical obligations for juvenile representation including these guidelines for representation and the special role played in juvenile courts; and

6. child development, including the needs and abilities of juveniles.

C. An attorney representing juveniles shall annually complete six hours of training relevant to the representation of juveniles. Additional training may include, but is not limited to:

1. adolescent mental health diagnoses and treatment, including the use of psychotropic medications;

2. how to read a psychological or psychiatric evaluation and how to use these in motions, including but not limited to those involving issues of consent and competency relating to Miranda warnings, searches and waivers;

3. normal childhood development (including brain development), developmental delays and mental retardation;

4. information on the multidisciplinary input required in child-related cases, including information on local experts who can provide consultation and testimony;

5. information on educational rights, including special educational rights and services and how to access and interpret school records and how to use them in motions, including but not limited to those related to consent and competency issues;

6. school suspension and expulsion procedures;

7. skills for communicating with children;

8. information gathering and investigative techniques;

9. use and application of the current assessment tool(s) used in the applicable jurisdiction and possible challenges that can be used to protect juvenile clients;

10. immigration issues regarding children;

11. gang involvement and activity;

12. factors leading children to delinquent behavior, signs of abuse and/or neglect, and issues pertaining to status offenses; and

13. information on religious background and racial and ethnic heritage, and sensitivity to issues of cultural and socio-economic diversity, sexual orientation, and gender identity.

D. Individual lawyers who are new to juvenile representation should take the opportunity to practice under

the guidance of a senior lawyer mentor. Correspondingly, experienced attorneys are encouraged to provide mentoring to new attorneys, assist new attorneys in preparing cases, debrief following court hearings, and answer questions as they arise.

E. If personal matters make it impossible for the defense counsel to fulfill the duty of zealous representation, he or she has a duty to refrain from representing the client. If it later appears that counsel is unable to offer effective representation in the case, counsel should move to withdraw.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1311. Basic Obligations

A. The attorney should obtain copies of all pleadings and relevant notices.

B. The attorney should participate in all negotiations, discovery, pre-adjudication conferences, and hearings.

C. The attorney should confer with the juvenile within 48 hours of being appointed and prior to every court appearance to counsel the child concerning the subject matter of the litigation, the client's rights, the court system, the proceedings, the lawyer's role, and what to expect in the legal process.

D. Lawyers should promptly inform the child of his or her rights and pursue any investigatory or procedural steps necessary to protect the child's interests throughout the process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1313. Conflicts of Interest

A. The attorney shall be alert to all potential and actual conflicts of interest that would impair his or her ability to represent a juvenile client. Loyalty and independent judgment are essential elements in the lawyer's relationship to a juvenile client. Conflicts of interest can arise from the lawyer's responsibilities to another client, a former client or a third person, or from the lawyer's own interests. Each potential conflict shall be evaluated with the particular facts and circumstances of the case and the juvenile client in mind. Where appropriate, attorneys may be obligated to contact the Office of Disciplinary Counsel to seek an advisory opinion on any potential conflicts.

B. Joint representation of co-defendants is not a per se violation of the constitutional guarantee of effective assistance of counsel. However, if the attorney must forbear from doing something on behalf of a juvenile client because of responsibilities or obligations to another client, there is a conflict. Similarly, if by doing something for one client, another client is harmed, there is a conflict.

C. The attorney's obligation is to the juvenile client. An attorney should not permit a parent or custodian to direct the representation. The attorney should not share information unless disclosure of such information has been approved by the child. With the child's permission, the attorney should maintain rapport with the child's parent or guardian, but should not allow that rapport to interfere with the attorney's duties to the child or the expressed interests of the child. Where there are conflicts of interests or opinions between the client and the client's parent or custodian, the attorney

need not discuss the case with parents and shall not represent the views of a parent that are contrary to the client's wishes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1315. Client Communications

A. The attorney shall keep the child informed of the developments in the case and the progress of preparing the defense and should promptly comply with all reasonable requests for information.

B. Where the attorney is unable to communicate with the child or his or her guardian because of language differences, the attorney shall take whatever steps are necessary to ensure that he or she is able to communicate with the client and that the client is able to communicate his or her understanding of the proceedings. Such steps could include obtaining funds for an interpreter to assist with pre-adjudication preparation, interviews, and investigation, as well as in-court proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1317. Client Confidentiality

A. Juvenile defense counsel is bound by attorney-client confidentiality and privilege. The duty of confidentiality that the attorney owes the child is coextensive with the duty of confidentiality that attorneys owe their adult clients.

B. The attorney should seek from the outset to establish a relationship of trust and confidence with the child. The attorney should explain that full disclosure to counsel of all facts known to the child is necessary for effective representation and, at the same time, explain that the attorney's obligation of confidentiality makes privileged the client's disclosures relating to the case.

C. There is no exception to attorney-client confidentiality in juvenile cases for parents or guardians. Juvenile defense counsel has an affirmative obligation to safeguard a child's information or secrets from parents or guardians. Absent the child's informed consent, the attorney's interviews with the client shall take place outside the presence of the parents or guardians. Parents or guardians do not have any right to inspect juvenile defense counsel's file, notes, discovery, or any other case-related documents without the client's express consent. While it may often be a helpful or even necessary strategy to enlist the parents or guardians as allies in the case, juvenile defense counsel's primary obligation is to keep the child's secrets. Information relating to the representation of the child includes all information relating to the representation, whatever its source. Even if revealing the information might allow the client to receive sorely-needed services, defense counsel is bound to protect the child's confidences, unless the client gives the attorney explicit permission to reveal the information to get the particular services or disclosure is impliedly authorized to carry out the client's case objectives.

D. In accordance with Louisiana Rule of Professional Conduct 1.6(b), a lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

1. to prevent reasonably certain death or substantial bodily harm;

2. to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;

3. to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

4. to secure legal advice about the lawyer's compliance with the Rules of Professional Conduct;

5. to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or

6. to comply with other law or a court order.

E. To observe the attorney's ethical duty to safeguard the child's confidentiality, attorney-client interviews shall take place in a private environment. This limitation requires that, at the courthouse, juvenile defense counsel should arrange for access to private interview rooms, instead of discussing case specifics with the child in the hallways; in detention facilities, juvenile defense counsel should have means to talk with the child out of the earshot of other inmates and guards; and in the courtroom, juvenile defense counsel should ask for a private space in which to consult with the child and speak with the child out of range of any microphones or recording devices.

F. An attorney shall exercise discretion in revealing or discussing the contents of psychiatric, psychological, medical and social reports, tests or evaluations bearing on the juvenile client's history or condition. In general, the lawyer should not disclose data or conclusions contained in such reports to the extent that, in the lawyer's judgment based on knowledge of the child and the child's family, the revelation would be likely to affect adversely the client's well-being or relationships within the family and disclosure is not necessary to protect the client's interests in the proceeding.

G. An attorney should ensure that communications with a client in an institution, including a detention center, are confidential. One way to ensure confidentiality is to stamp all mail as legal and confidential.

H. In cases where delinquency proceedings are public, to protect the confidential and sometimes embarrassing information involved, the attorney, in consultation with the child, should move to close the proceedings or request the case to be called last on the docket when the courtroom is empty.

I. The media may report on certain delinquency cases. If a decision is made to speak to the media, the attorney should be cautious due to confidentiality, other rules of professional conduct, the potential for inaccurate reporting and strategic considerations. The attorney representing a child before the juvenile court should avoid personal publicity connected with the case, both during adjudication and thereafter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1319. Case File

A. The attorney has the obligation to ensure that the case file is properly documented to demonstrate adherence to these standards, such as, where relevant, documentation of intake and contact information, client and witness interviews, critical deadlines, motions, and any other relevant information regarding the case. The case file should also contain, where relevant, copies of all pleadings, orders, releases (school, medical, mental health, or other types), discovery, and correspondence associated with the case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1321. Continuity of Representation

A. The attorney initially appointed should continue his or her representation through all stages of the proceedings. Unless otherwise ordered by the court, the attorney of record should continue to represent the child from the point of detention through disposition, post-disposition review hearings, and any other related proceedings, until the case is closed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1323. Stand-In Counsel

A. Any attorney appointed to stand in for another at any delinquency proceeding shall:

1. represent the child zealously as if the child is his or her own client;
2. ensure that the child knows how to contact stand-in counsel in case the child does not hear from the attorney of record;
3. immediately communicate with the attorney of record regarding upcoming dates/hearings, how to contact the child, placement of the child, nature of charges, and other timely issues that the attorney of record may need to know or address; and
4. immediately or within a reasonable time thereafter provide to the child's attorney of record all notes, documents, and any discovery received.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1325. Caseloads

A. The attorney should not have such a large number of cases that he or she is unable to comply with these guidelines and the Rules of Professional Conduct. Before agreeing to act as the attorney or accepting appointment by a court, the attorney has an obligation to make sure that he or she has sufficient time, resources, knowledge, and experience to offer quality legal services in a particular matter. If, after accepting an appointment, it later appears that the attorney is unable to offer effective representation, the attorney should consider appropriate case law and ethical standards in deciding whether to move to withdraw or take other appropriate action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1327. Social Work and Probation Personnel

A. Attorneys should cooperate with social workers and probation personnel and should instruct the client to do so, except to the extent such cooperation is or will likely become inconsistent with protection of the client's legitimate interests in the proceeding or of any other rights of the client under the law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1329. Detention

A. For purposes of appointment of counsel, children are presumed to be indigent. The attorney shall meet with a detained child within 48 hours of notice of appointment or before the continued custody hearing, whichever is earlier, and shall take other prompt action necessary to provide quality representation, including:

1. personally reviewing the well-being of the child and the conditions of the facility, and ascertaining the need for any medical or mental health treatment;
2. ascertaining whether the child was arrested pursuant to a warrant or a timely determination of probable cause by a judicial officer;
3. making a motion for the release of the child where no determination of probable cause has been made by a judicial officer within 48 hours of arrest; and
4. invoking the protections of appropriate constitutional provisions, federal and state laws, statutory provisions, and court rules on behalf of the child, and revoking any waivers of these protections purportedly given by the child, as soon as practicable via a notice of appearance or other pleading filed with the State and court.

B. Where the child is detained, the attorney shall:

1. be familiar with the legal criteria for determining pre-adjudication release and conditions of release, and the procedures that will be followed in setting those conditions, including but not limited to the use and accuracy of any risk assessment instruments;
2. be familiar with the different types of pre-adjudication release conditions the court may set and whether private or public agencies are available to act as a custodian for the child's release; and
3. be familiar with any procedures available for reviewing the judge's setting of bail.

C. The attorney shall attempt to secure the pre-adjudication release of the child under the conditions most favorable and acceptable to the client unless contrary to the expressed wishes of the child.

D. If the child is detained, the attorney should try to ensure, prior to any initial court hearing, that the child does not appear before the judge in inappropriate clothing, shackles or handcuffs.

E. The attorney should determine whether a parent or other adult is able and willing to assume custody of the juvenile client. Every effort should be made to locate and contact such a responsible adult if none is present at the continued custody hearing.

F. The attorney should arrange to have witnesses to support release. This may include a minister or spiritual advisor, teacher, relative, other mentor or other persons who

are willing to provide guidance, supervision and positive activities for the youth during release.

G. If the juvenile is released, the attorney should fully explain the conditions of release to the child and advise him or her of the potential consequences of a violation of those conditions. If special conditions of release have been imposed (e.g., random drug screening) or other orders restricting the client's conduct have been entered (e.g., a no contact order), the client should be advised of the legal consequences of failure to comply with such conditions.

H. The attorney should know the detention facilities, community placements and other services available for placement.

I. Where the child is detained and unable to obtain pre-adjudication release, the attorney should be aware of any special medical, mental health, education and security needs of the child and, in consultation with the child, request that the appropriate officials, including the court, take steps to meet those special needs.

J. Following the continued custody hearing, the attorney should continue to advocate for release or expeditious placement of the child. If the child is not released, he or she should be advised of the right to have the placement decision reviewed or appealed.

K. Whenever the child is held in some form of detention, the attorney should visit the child no less often than once a month and personally review his or her well-being, the conditions of the facility, and the opportunities to obtain release.

L. Whenever the child is held in some form of detention, the attorney should be prepared for an expedited adjudicatory hearing.

M. Where the child is not able to obtain release under the conditions set by the court, counsel should consider pursuing modification of the conditions of release under the procedures available.

N. If the court sets conditions of release which require the posting of monetary bond or the posting of real property as collateral for release, counsel should make sure the child understands the available options and the procedures that must be followed in posting such assets. Where appropriate, counsel should advise the child and others acting in his or her behalf how to properly post such assets.

O. The lawyer should not personally guarantee the attendance or behavior of the child or any other person, whether as surety on a bail bond or otherwise.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1331. Initial Interview with Child

A. The attorney should conduct a client interview as soon as practicable in order to obtain the information necessary to provide quality representation at the early stages of the case and to provide the child with information concerning the representation and the case proceedings. Establishing and maintaining a relationship with the child is the foundation of quality representation. Irrespective of the child's age, the attorney should consult with the child well before each court hearing. The attorney shall explain to the client how to contact the attorney and should promptly comply with child's requests for contact and assistance.

B. A meeting or conversation conducted in a hallway or holding cell at the courthouse is not a substitute for a thorough interview conducted in private and may waive confidentiality.

C. Prior to conducting the initial interview, the attorney should, where possible:

1. be familiar with the elements of the offense(s) and the potential punishment(s), where the charges against the client are already known;

2. obtain copies of any relevant documents that are available, including copies of any charging documents, recommendations and reports concerning pre-adjudication release, and law enforcement reports that might be available;

3. request mental health, juvenile assessment center, detention center or educational records, including any screenings or assessments, that may help in the initial interview with the client.

D. The purposes of the initial interview are to provide the child with information concerning the case and to acquire information from the child concerning the facts of the case.

1. To provide information to the client, the attorney should specifically:

- a. explain the nature of the attorney-client relationship to the child, including the requirements of confidentiality;

- b. explain the attorney-client privilege and instruct the child not to talk to anyone about the facts of the case without first consulting with the attorney;

- c. ensure the child understands that he or she has the right to speak with his or her attorney;

- d. explain the nature of the allegations, what the government must prove, and the likely and maximum potential consequences;

- e. explain a general procedural overview of the progression of the case;

- f. explain the role of each player in the system;

- g. explain the consequences of non-compliance with court orders;

- h. explain how and when to contact the attorney;

- i. provide the names of any other persons who may be contacting the child on behalf of the attorney;

- j. obtain a signed release authorizing the attorney and/or his or her agent to obtain official records related to the client, including medical and mental health records, school records, employment records, etc.;

- k. discuss arrangements to address the child's most critical needs (e.g., medical or mental health attention, request for separation during detention, or contact with family or employers); and

- l. assess whether the child is competent to proceed or has a disability that would impact a possible defense or mitigation.

2. For a child who is detained, the attorney should also:

- a. explain the procedures that will be followed in setting the conditions of pre-adjudication release;

- b. explain the type of information that will be requested in any interview that may be conducted by a pre-adjudication release agency, explain that the child should not make statements concerning the offense, and explain that the

right to not testify against oneself extends to all situations, including mental health evaluations; and

c. warn the child of the dangers with regard to the search of client's cell and personal belongings while in custody and the fact that telephone calls, mail, and visitations may be monitored by detention officials.

3. The attorney or a representative of the attorney should collect information from the child including, but not limited to:

a. the facts surrounding the charges leading to the child's detention, to the extent the child knows and is willing to discuss these facts;

b. the child's version of the arrest, with or without a warrant; whether the child was searched and if anything was seized, with or without warrant or consent; whether the child was interrogated and if so, whether a statement was given; the child's physical and mental status at the time any statement was given; whether any samples were provided, such as blood, tissue, hair, DNA, handwriting, etc., and whether any scientific tests were performed on the child's body or bodily fluids;

c. the existence of any tangible evidence in the possession of the state (when appropriate, the attorney shall take steps to ensure that this evidence is preserved);

d. the names and custodial status of all co-defendants and the names of the attorneys for the co-defendants (if counsel has been appointed or retained);

e. the names and locating information of any witnesses to the crime and/or the arrest, regardless of whether these are witnesses for the prosecution or for the defense;

f. the child's current living arrangements, family relationships, and ties to the community, including the length of time his or her family has lived at the current and former addresses, as well as the child's supervision when at home;

g. any prior names or aliases used, employment record and history, and social security number;

h. the immigration status of the child and his or her family members, if applicable;

i. the child's educational history, including current grade level, attendance and any disciplinary history;

j. the child's physical and mental health, including any impairing conditions such as substance abuse or learning disabilities, and any prescribed medications and other immediate needs;

k. the child's delinquency history, if any, including arrests, detentions, diversions, adjudications, and failures to appear in court;

l. whether there are any other pending charges against the child and the identity of any other appointed or retained counsel;

m. whether the child is on probation (and the nature of the probation) or post-release supervision and, if so, the name of his or her probation officer or counselor and the child's past or present performance under supervision;

n. the options available to the child for release if the child is in secure custody;

o. the names of individuals or other sources that the attorney can contact to verify the information provided by the child and the permission of the child to contact those sources;

p. the ability of the child's family to meet any financial conditions of release (for clients in detention); and

q. where appropriate, evidence of the child's competence to participate in delinquency proceedings and/or mental state at the time of the offense, including releases from the client for any records for treatment or testing for mental health or mental retardation.

E. Throughout the delinquency process, the attorney should take the time to:

1. keep the child informed of the nature and status of the proceedings on an ongoing basis;

2. maintain regular contact with the child during the course of the case and especially before court hearings;

3. review all discovery with the child as part of the case theory development;

4. promptly respond to telephone calls and other types of contact from the child, where possible, within one business day or a reasonable time thereafter;

5. counsel the child on options and related consequences and decisions to be made; and

6. seek the lawful objectives of the child and not substitute the attorney's judgment for that of the child in those case decisions that are the responsibility of the child. Where an attorney believes that the child's desires are not in his or her best interest, the attorney should discuss the consequences of the child's position. If the child maintains his or her position, the attorney should defend the child's expressed interests vigorously within the bounds of the law.

F. In interviewing a child, it is proper for the lawyer to question the credibility of the child's statements or those of any other witness. The lawyer shall not, however, suggest expressly or by implication that the child or any other witness prepare or give, on oath or to the lawyer, a version of the facts which is in any respect untruthful, nor shall the lawyer intimate that the child should be less than candid in revealing material facts to the attorney.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1333. Transfer to Adult Proceedings

A. The attorney should be familiar with laws subjecting a child to the exclusive jurisdiction of a court exercising criminal jurisdiction, including the offenses subjecting the client to such jurisdiction. Counsel should seek to discover at the earliest opportunity whether transfer will be sought and, if so, the procedure and criteria according to which that determination will be made.

B. Upon learning that transfer will be sought or may be elected, the attorney should fully explain the nature of the proceeding and the consequences of transfer to the child and the child's parents. In so doing, counsel may further advise the child concerning participation in diagnostic and treatment programs that may provide information material to the transfer decision.

C. The attorney should be aware when an indictment may be filed directly in adult court by a district attorney and take actions to prevent such a filing including:

1. promptly investigating all circumstances of the case bearing on the appropriateness of filing the case in adult court and seeking disclosure of any reports or other evidence

that the district attorney is using in his or her consideration of a direct filing;

2. moving promptly for appointment of an investigator or expert witness to aid in the preparation of the defense when circumstances warrant; and

3. where appropriate, moving promptly for the appointment of a competency or sanity commission prior to the transfer.

D. Where a district attorney may transfer the case either through indictment filed directly in adult court or by a finding of probable cause at a continued custody hearing in juvenile court, the attorney should present all facts and mitigating evidence to the district attorney to keep the child in juvenile court.

E. Where the district attorney makes a motion to conduct a hearing to consider whether to transfer the child, the attorney should prepare in the same way and with as much care as for an adjudication. The attorney should:

1. conduct an in-person interview with the child;

2. identify, locate and interview exculpatory or mitigating witnesses;

3. consider obtaining an expert witness to testify to the amenability of the child to rehabilitation; and

4. present all facts and mitigating evidence to the court to keep the juvenile client in juvenile court.

F. In preparing for a transfer hearing, the attorney should be familiar with all the procedural protections available to the child including but not limited to discovery, cross-examination, compelling witnesses.

G. If the attorney who represented the child in the delinquency court will not represent the child in the adult proceeding, the delinquency attorney should ensure the new attorney has all the information acquired to help in the adult proceedings.

H. If transfer for criminal prosecution is ordered, the lawyer should act promptly to preserve an appeal from that order and should be prepared to make any appropriate motions for post-transfer relief.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1335. Mental Health Examinations

A. Throughout a delinquency proceeding, either party may request or the judge may order a mental health examination of the child. Admissions made during such examinations may not be protected from disclosure. The attorney should ensure the child understands the consequences of admissions during such examinations and advise the client that personal information about the child or the child's family may be revealed to the court or other personnel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1337. Mental Incapacity to Proceed

A. The attorney should be familiar with procedures for a determination of mental incapacity to proceed under the Louisiana Children's Code and other provisions of Louisiana law.

B. Although the client's expressed interests ordinarily control, the attorney should question capacity to proceed

without the child's approval or over the child's objection, if necessary.

C. If, at any time, the child's behavior or mental ability indicates that he or she may be incompetent, the attorney should consider filing a motion for a competency commission.

D. The attorney should prepare for and participate fully in the competency hearing.

E. Prior to the evaluation by the commission, the attorney should request from the child and provide to the commission all relevant documents including but not limited to the arrest report, prior psychological/psychiatric evaluations, school records and any other important medical records.

F. Where appropriate, the attorney should advise the client of the potential consequences of a finding of incompetence. Prior to any proceeding, the attorney should be familiar with all aspects of the evaluation and should seek additional expert advice where appropriate. If the competency commission's finding is that the child is competent, where appropriate, the attorney should consider calling an independent mental health expert to testify at the competency hearing.

G. The attorney should be aware that the burden of proof is on the child to prove incompetency and that the standard of proof is a preponderance of the evidence.

H. If the child is found incompetent, the attorney should participate, to the extent possible, in the development of the mental competency plan and in any subsequent meetings or hearings regarding the child's mental capacity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1339. Insanity

A. The attorney should be familiar with the procedures for determination of sanity at the time of the offense and notice requirements under the Louisiana Children's Code and other provisions of Louisiana law when proceeding with an insanity defense.

B. If the attorney believes that the child did not appreciate the consequences of his or her actions at the time of the offense, the attorney should consider filing for a sanity commission.

C. The attorney should advise the child that if he or she is found not delinquent by reason of insanity, the court may involuntarily commit the child to the Department of Health and Hospitals for treatment. The attorney should be prepared to advocate on behalf of the child against involuntary commitment and provide other treatment options such as outpatient counseling or services.

D. The attorney should be prepared to raise the issue of sanity during all phases of the proceedings, if the attorney's relationship with the child reveals that such a plea is appropriate.

E. The attorney should be aware that the child has the burden of establishing the defense of insanity at the time of the offense by a preponderance of the evidence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1341. Manifestation of a Disability

A. Where the child's actions that are the subject of the delinquency charge suggest a manifestation of a disability, the attorney should argue that the disability prevented the client from having the mental capacity or specific intent to commit the crime. Where appropriate, for school-based offenses, the attorney should argue that the school did not follow the child's Individual Education Program, which could have prevented the client's behavior. The attorney should seek a judgment of dismissal or a finding that the juvenile is not delinquent. This information may also be used for mitigation at the time of disposition following a plea or a finding of delinquency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1343. Ensure Official Recording of Court Proceedings

A. The attorney should take all necessary steps to ensure a full official recording of all aspects of the court proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1345. Investigation

A. The child's attorney shall conduct a prompt and diligent independent case investigation. The child's admissions of responsibility or other statements to counsel do not necessarily obviate the need for investigation.

B. The attorney should ensure that the charges and disposition are factually and legally correct and the child is aware of potential defenses to the charges.

C. The attorney should examine all charging documents to determine the specific charges that have been brought against the child, including the arrest warrant, accusation and/or indictment documents, and copies of all charging documents in the case. The relevant statutes and precedents should be examined to identify the elements of the offense(s) with which the child is charged, both the ordinary and affirmative defenses that may be available, any lesser included offenses that may be available, and any defects in the charging documents, constitutional or otherwise, such as statute of limitations or double jeopardy.

D. The attorney should seek investigators and experts, as needed, to assist the attorney in the preparation of a defense, in the understanding of the prosecution's case, or in the rebuttal of the prosecution's case.

E. Where circumstances appear to warrant it, the lawyer should also investigate resources and services available in the community and, if appropriate, recommend them to the child and child's family.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1347. Diversion/Alternatives

A. The attorney should be familiar with diversionary programs and alternative solutions available in the community. Such programs may include diversion, mediation, or other alternatives that could result in a child's case being dismissed or handled informally. When appropriate and available, the attorney shall advocate for the

use of informal mechanisms that could divert the client's case from the formal court process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1349. Continued Custody Hearing

A. The attorney should take steps to see that the continued custody hearing is conducted in a timely fashion unless there are strategic reasons for not doing so.

B. In preparing for the continued custody hearing, the attorney should become familiar with:

1. the elements of each of the offenses alleged;
2. the law for establishing probable cause;
3. factual information that is available concerning probable cause;
4. the subpoena process for obtaining compulsory attendance of witnesses at continued custody hearing and the necessary steps to be taken in order to obtain a proper recordation of the proceedings;
5. the child's custodial situation, including all persons living in the home;
6. alternative living arrangements for the client where the current custodial situation is an obstacle to release from detention; and
7. potential conditions for release from detention and local options to fulfill those conditions, including the criteria for setting bail and options for the family to meet bail requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1351. Appearance to Answer

A. The attorney should preserve the child's rights at the appearance to answer on the charges by requesting a speedy trial, preserving the right to file motions, demanding discovery, and entering a plea of denial in most circumstances, unless there is a sound tactical reason for not doing so or the child expresses an informed decision to resolve the matter quickly.

B. Where appropriate, the attorney should arrange for the court to address any immediate needs of the child, such as educational/vocational needs, emotional/mental/physical health needs, and safety needs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1353. Child's Right to Speedy Trial

A. The attorney should be aware of and protect the child's right to a speedy trial, unless strategic considerations warrant otherwise. Requests or agreements to continue a contested hearing date should not be made without consultation with the child. The attorney shall diligently work to complete the investigation and preparation in order to be fully prepared for all court proceedings. In the event an attorney finds it necessary to seek additional time to adequately prepare for a proceeding, the attorney should consult with the child and discuss seeking a continuance of the upcoming proceeding. Whenever possible, written motions for continuance made in advance of the proceeding are preferable to oral requests for continuance. All requests

for a continuance should be supported by well-articulated reasons on the record in the event it becomes an appealable issue.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1355. Discovery

A. The attorney should pursue discovery, including filing a motion for discovery and conducting appropriate interviews. The attorney has a duty to pursue, as soon as practicable, discovery procedures provided by the rules of the jurisdiction and to pursue such informal discovery methods as may be available to supplement the factual investigation of the case.

B. In considering discovery requests, the attorney should take into account that such requests may trigger reciprocal discovery obligations. The attorney shall be familiar with the rules regarding reciprocal discovery. The attorney shall be aware of any potential obligations and time limits regarding reciprocal discovery. Where the attorney intends to offer an alibi defense, he or she shall provide notice to the district attorney as required by law.

C. The attorney should consider seeking discovery, at a minimum, of the following items:

1. potential exculpatory information;
2. potential mitigating information;
3. the names and addresses of all prosecution witnesses, their prior statements, and criminal/delinquency records, if any;
4. all oral and/or written statements by the child, and the details of the circumstances under which the statements were made;
5. the prior delinquency record of the child and any evidence of other misconduct that the government may intend to use against the accused;
6. all books, papers, documents, photographs, tangible objects, buildings or places, or copies, descriptions, or other representations, or portions thereof, relevant to the case;
7. all results or reports of relevant physical or mental examinations, and of scientific tests or experiments, or copies thereof;
8. statements of co-defendants;
9. all investigative reports by all law enforcement and other agencies involved in the case; and
10. all records of evidence collected and retained by law enforcement.

D. The attorney shall monitor the dates to ensure the state complies with its discovery obligations. If discovery violations occur, the attorney should seek prompt compliance and/or sanctions for failure to comply.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1357. Theory of the Case

A. During the investigation and adjudication hearing preparation, the attorney should develop and continually reassess a theory of the case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1359. Motions

A. The attorney should file motions, responses or objections as necessary to zealously represent the client. The attorney should consider filing an appropriate motion whenever there exists a good faith reason to believe that the child is entitled to relief that the court has discretion to grant. The attorney should file motions as soon as possible due to the time constraints of juvenile court.

B. The decision to file motions should be made after considering the applicable law in light of the known circumstances of each case.

C. Among the issues that counsel should consider addressing in a motion include, but are not limited to:

1. the pre-adjudication custody of the child;
2. the constitutionality of the implicated statute or statutes;
3. the potential defects in the charging process;
4. the sufficiency of the charging document;
5. the propriety and prejudice of any joinder of charges or defendants in the charging document;
6. the discovery obligations of the state and the reciprocal discovery obligations of the defense;
7. the suppression of evidence gathered as the result of violations of the Fourth, Fifth or Sixth Amendments to the United States Constitution, state constitutional provisions or statutes, including:
 - a. the fruits of illegal searches or seizures;
 - b. involuntary statements or confessions;
 - c. statements or confessions obtained in violation of the child's right to an attorney, or privilege against self-incrimination; or
 - d. unreliable identification evidence that would give rise to a substantial likelihood of irreparable misidentification.
8. the suppression of evidence gathered in violation of any right, duty or privilege arising out of state or local law;
9. in consultation with the child, a mental or physical examination of the child;
10. relief due to mental incapacity, incompetency, mental retardation or mental illness;
11. access to resources that or experts who may be denied to the child because of his or her indigence;
12. the child's right to a speedy trial;
13. the child's right to a continuance in order to adequately prepare his or her case;
14. matters of evidence which may be appropriately litigated by means of a pre-adjudication motion in limine;
15. motion for judgment of dismissal; or
16. matters of adjudication or courtroom procedures, including inappropriate clothing or restraints of the client.

D. The attorney should withdraw a motion or decide not to file a motion only after careful consideration, and only after determining whether the filing of a motion may be necessary to protect the child's rights, including later claims of waiver or procedural default. The attorney has a continuing duty to file motions as new issues arise or new evidence is discovered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1361. Plea Negotiations

A. The attorney should explore with the child the possibility and desirability of reaching a negotiated disposition of the charges rather than proceeding to an adjudication, and in doing so, should fully explain the rights that would be waived by a decision to enter a plea and not to proceed to adjudication. After the attorney is fully informed on the facts and the law, he or she should, with complete candor, advise the child concerning all aspects of the case, including counsel's frank estimate of the probable outcome. Counsel should not understate or overstate the risks, hazards or prospects of the case in order unduly or improperly to influence the child's determination of his or her posture in the matter.

B. The attorney shall not accept any plea agreement without the child's express authorization.

C. The existence of ongoing tentative plea negotiations with the prosecution should not prevent the attorney from taking steps necessary to preserve a defense nor should the existence of ongoing plea negotiations prevent or delay the attorney's investigation into the facts of the case and preparation of the case for further proceedings, including adjudication.

D. The attorney should participate in plea negotiations to seek the best result possible for the child consistent with the child's interests and directions to the attorney. The attorney should consider narrowing contested issues or reaching global resolution of multiple pending cases. Prior to entering into any negotiations, the attorney shall have sufficient knowledge of the strengths and weaknesses of the child's case, or of the issue under negotiation, enabling the attorney to advise the child of the risks and benefits of settlement.

E. In conducting plea negotiations, the attorney should be familiar with:

1. the various types of pleas that may be agreed to, including an admission, a plea of nolo contendere, and a plea in which the child is not required to personally acknowledge his or her guilt (Alford plea);
2. the advantages and disadvantages of each available plea according to the circumstances of the case; and
3. whether the plea agreement is binding on the court and the Office of Juvenile Justice.

F. In conducting plea negotiations, the attorney should attempt to become familiar with the practices and policies of the particular jurisdiction, judge and prosecuting authority, and probation department that may affect the content and likely results of negotiated pleas.

G. In preparing to enter a plea before the court, the attorney should explain to the child the nature of the plea hearing and prepare the child for the role he or she will play in the hearing, including answering questions of the judge and providing a statement concerning the offense and the appropriate disposition. Specifically, the attorney should:

1. be satisfied there is a factual or strategic basis for the plea or admission or Alford plea;
2. make certain that the child understands the rights he or she will waive by entering the plea and that the child's decision to waive those rights is knowing, voluntary and intelligent; and
3. be satisfied that the plea is voluntary and that the child understands the nature of the charges;

H. When the plea is against the advice of the attorney or without adequate time to investigate, the attorney should indicate this on the record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1363. Court Appearances

A. The attorney shall attend all hearings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1365. Preparing the Child for Hearings

A. The attorney should explain to the juvenile, in a developmentally appropriate manner, what is expected to happen before, during and after each hearing.

B. The attorney should advise the client as to suitable courtroom dress and demeanor. If the client is detained, the attorney should consider requesting the client's appearance unshackled and unchained. The attorney should also be alert to the possible prejudicial effects of the client appearing before the court in jail or other inappropriate clothing.

C. The attorney should plan with the client the most convenient system for conferring throughout the delinquency proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1367. Adjudication Preparation

A. Where appropriate, the attorney should have the following materials available at the time of trial:

1. copies of all relevant documents filed in the case;
2. relevant documents prepared by investigators;
3. outline or draft of opening statement;
4. cross-examination plans for all possible prosecution witnesses;
5. direct examination plans for all prospective defense witnesses;
6. copies of defense subpoenas;
7. prior statements of all prosecution witnesses (e.g., transcripts, police reports) and prepared transcripts of any audio or video taped witness statements;
8. prior statements of all defense witnesses;
9. reports from all experts;
10. a list of all defense exhibits, and the witnesses through whom they will be introduced;
11. originals and copies of all documentary exhibits;
12. copies of all relevant statutes and cases; and
13. outline or draft of closing argument.

B. The attorney should be fully informed as to the rules of evidence, court rules, and the law relating to all stages of the delinquency proceedings, and should be familiar with legal and evidentiary issues that can reasonably be anticipated to arise in the adjudication.

C. The attorney should decide if it is beneficial to secure an advance ruling on issues likely to arise at trial (e.g., use of prior adjudications to impeach the child) and, where appropriate, the attorney should prepare motions and memoranda for such advance rulings.

D. Throughout the adjudication process, the attorney should endeavor to establish a proper record for appellate

review. The attorney shall be familiar with the substantive and procedural law regarding the preservation of legal error for appellate review, and should ensure that a sufficient record is made to preserve appropriate and potentially meritorious legal issues for such appellate review unless there are strategic reasons for not doing so.

E. Where necessary, the attorney should seek a court order to have the child available for conferences.

F. Throughout preparation and adjudication, the attorney should consider the potential effects that particular actions may have upon sentencing if there is a finding of delinquency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1369. Objections

A. The attorney should make appropriate motions, including motions in limine and evidentiary and other objections, to advance the child's position at adjudication or during other hearings. The attorney should be aware of the burdens of proof, evidentiary principles and court procedures applying to the motion hearing. If necessary, the attorney should file briefs in support of evidentiary issues. Further, during all hearings, the attorney should preserve legal issues for appeal, as appropriate.

B. Control of proceedings is principally the responsibility of the court, and the lawyer should comply promptly with all rules, orders, and decisions of the judge. Counsel has the right to make respectful requests for reconsideration of adverse rulings and has the duty to set forth on the record adverse rulings or judicial conduct that the attorney considers prejudicial to the child's legitimate interests.

C. The attorney should be prepared to object to the introduction of any evidence damaging to the child's interests if counsel has any legitimate doubt concerning its admissibility under constitutional or local rules of evidence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1371. Sequestration of Witnesses

A. Prior to delivering an opening statement, the attorney should ask for the rule of sequestration of witnesses to be invoked, unless a strategic reason exists for not doing so.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1373. Opening Statements

A. The attorney should be familiar with the law and the individual trial judge's rules regarding the permissibility and permissible content of an opening statement. The attorney should consider the strategic advantages and disadvantages of disclosure of particular information during the opening statement and of deferring the opening statement until the beginning of the defense case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1375. Confronting the Prosecutor's Case

A. The attorney should attempt to anticipate weaknesses in the prosecution's proof and consider researching and preparing corresponding motions for judgment of dismissal. The attorney should systematically analyze all potential prosecution evidence, including physical evidence, for evidentiary problems.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1377. Stipulations

A. The attorney should consider the advantages and disadvantages of entering into stipulations concerning the prosecution's case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1379. Cross-Examination

A. In preparing for cross-examination, the attorney should be familiar with the applicable law and procedures concerning cross-examinations and impeachment of witnesses. In order to develop material for impeachment or to discover documents subject to disclosure, the attorney should be prepared to question witnesses as to the existence of prior statements that they may have made or adopted.

B. In preparing for cross-examination, the attorney should:

1. obtain the prior records of all state and defense witnesses;
2. be prepared to examine any witness;
3. consider the need to integrate cross-examination, the theory of the defense, and closing argument;
4. consider whether cross-examination of each individual witness is likely to generate helpful information;
5. anticipate those witnesses the prosecutor might call in its case-in-chief or in rebuttal;
6. consider a cross-examination plan for each of the anticipated witnesses;
7. be alert to inconsistencies in witnesses' testimony;
8. be alert to possible variations in witnesses' testimony;
9. review all prior statements of the witnesses and any prior relevant testimony of the prospective witnesses;
10. where appropriate, review relevant statutes and local police policy and procedure manuals, disciplinary records and department regulations for possible use in cross-examining police witnesses;
11. have prepared, for introduction into evidence, all documents that counsel intends to use during the cross-examination, including certified copies of records such as prior convictions of the witnesses or prior sworn testimony of the witnesses; and
12. be alert to issues relating to witness credibility, including bias and motive for testifying.

C. The lawyer should be prepared to examine fully any witness whose testimony is damaging to the child's interests.

D. The lawyer's knowledge that a witness is telling the truth does not preclude cross-examination in all circumstances but may affect the method and scope of cross-examination.

E. The attorney should consider conducting a voir dire examination of potential prosecution witnesses who may not be competent to give particular testimony, including expert witnesses whom the prosecutor may call. The attorney should be aware of the law of competency of witnesses, in general, and admission of expert testimony, in particular, in order to be able to raise appropriate objections.

F. Before beginning cross-examination, the attorney should ascertain whether the prosecutor has provided copies of all prior statements of the witnesses as required by law. If the attorney does not receive prior statements of prosecution witnesses until they have completed direct examination, the attorney should request adequate time to review these documents before commencing cross-examination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1381. Conclusion of Prosecution's Evidence

A. Where appropriate, at the close of the prosecution's case, the attorney should move for a dismissal of petition on each count charged. The attorney should request, when necessary, that the court immediately rule on the motion, in order that the attorney may make an informed decision about whether to present a defense case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1383. Defense Strategy

A. The attorney should develop, in consultation with the child, an overall defense strategy. In deciding on a defense strategy, the attorney should consider whether the child's legal interests are best served by not putting on a defense case, and instead relying on the prosecution's failure to meet its constitutional burden of proving each element beyond a reasonable doubt. In developing and presenting the defense case, the attorney should consider the implications it may have for a rebuttal by the prosecutor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1385. Affirmative Defenses

A. The attorney should be aware of the elements and burdens of proof of any affirmative defense.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1387. Direct Examination

A. In preparing for presentation of a defense case, the attorney should, where appropriate:

1. develop a plan for direct examination of each potential defense witness;
2. determine the implications that the order of witnesses may have on the defense case;
3. determine what facts necessary for the defense case can be elicited through the cross-examination of the prosecution's witnesses;
4. consider the possible use of character witnesses, to the extent that use of character witnesses does not allow the

prosecution to introduce potentially harmful evidence against the child;

5. consider the need for expert witnesses and what evidence must be submitted to lay the foundation for the expert's testimony;

6. review all documentary evidence that must be presented;

7. review all tangible evidence that must be presented; and

8. after the state's presentation of evidence and a discussion with the child, make the decision whether to call any witnesses.

B. The attorney should conduct redirect examination as appropriate.

C. The attorney should prepare all witnesses for direct and possible cross-examination. Where appropriate, the attorney should also advise witnesses of suitable courtroom dress and demeanor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1389. Child's Right to Testify

A. The attorney shall respect the child's right to decide whether to testify.

B. The attorney should discuss with the child all of the considerations relevant to the child's decision to testify. This advice should include consideration of the child's need or desire to testify, any repercussions of testifying, the necessity of the child's direct testimony, the availability of other evidence or hearsay exceptions that may substitute for direct testimony by the child, and the child's developmental ability to provide direct testimony and withstand possible cross-examination.

C. The attorney should be familiar with his or her ethical responsibilities that may be applicable if the child insists on testifying untruthfully. If the child indicates an intent to commit perjury, the attorney shall advise the child against taking the stand to testify falsely and, if necessary, take appropriate steps to avoid lending aid to perjury. If the child persists in a course of action involving the attorney's services that the attorney reasonably believes is criminal or fraudulent, the attorney should seek the leave of the court to withdraw from the case. If withdrawal from the case is not feasible or is not permitted by the court, or if the situation arises during adjudication without notice, the attorney shall not lend aid to perjury or use the perjured testimony. The attorney should maintain a record of the advice provided to the child and the child's decision concerning whether to testify.

D. The attorney should protect the child's privilege against self-incrimination in juvenile court proceedings. When the child has elected not to testify, the lawyer should be alert to invoke the privilege and should insist on its recognition unless the client competently decides that invocation should not be continued.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1391. Preparing the Child to Testify

A. If the child decides to testify, the attorney should prepare the child to testify. This should include familiarizing the child with the courtroom, court procedures, and what to expect during direct and cross-examination. Often the decision whether to testify may change at trial. Thus, the attorney should prepare the case for either contingency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1393. Questioning the Child

A. The attorney should seek to ensure that questions to the child are phrased in a developmentally appropriate manner. The attorney should object to any inappropriate questions by the court or an opposing attorney.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1395. Closing Arguments

A. The attorney should be familiar with the court rules, applicable statutes and law, and the individual judge's practice concerning time limits and objections during closing argument, and provisions for rebuttal argument by the prosecution. The attorney should consider the strategic advantages and disadvantages of a closing statement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1397. Motion for a New Trial

A. The attorney should be familiar with the procedures available to request a new trial including the time period for filing such a motion, the effect it has upon the time to file a notice of appeal, and the grounds that can be raised.

B. When a judgment of delinquency has been entered against the client after trial, the attorney should consider whether it is appropriate to file a motion for a new trial with the trial court. In deciding whether to file such a motion, the factors the attorney should consider include:

1. the likelihood of success of the motion, given the nature of the error(s) that can be raised; and
2. the effect that such a motion might have upon the client's appellate rights, including whether the filing of such a motion is necessary to, or will assist in, preserving the child's right to raise on appeal the issues that might be raised in the new trial motion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1399. Expungement

A. The attorney should inform the child of any procedures available for requesting that the record of conviction be expunged or sealed. The attorney should explain that some contents of juvenile court records may be made public (e.g., when a violent crime has been committed) and that there are limitations on the expungement of records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

Chapter 15. Trial Court Performance Standards for Attorneys Representing Children in Delinquency Proceedings - Post-Adjudication

§1501. Post-adjudication Placement Pending Disposition

A. Following the entry of an adjudication, the attorney should be prepared to argue for the least restrictive environment for the child pending disposition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1503. Defense's Active Participation in Designing the Disposition

A. The active participation of the child's attorney at disposition is essential. In many cases, the attorney's most valuable service to the child will be rendered at this stage of the proceeding. Counsel should have the disposition hearing held on a subsequent date after the adjudication, unless there is a strategic reason for waiving the delay between adjudication and disposition.

B. Prior to disposition there may be non-court meetings and staffings that can affect the juvenile's placement or liberty interest. The attorney should attend or participate in these, where possible.

C. The attorney should not make or agree to a specific dispositional recommendation without the child's consent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1505. Obligations of Counsel Regarding Disposition

A. The child's attorney should prepare for a disposition hearing as the attorney would for any other evidentiary hearing, including the consideration of calling appropriate witnesses and the preparation of evidence in mitigation of or support of the recommended disposition. Among the attorney's obligations regarding the disposition hearing are:

1. to ensure all information presented to the court which may harm the child and which is not accurate and truthful or is otherwise improper is stricken from the text of the predisposition investigation report;
2. to develop a plan which seeks to achieve the least restrictive and burdensome sentencing alternative that is most acceptable to the child, and which can reasonably be obtained based on the facts and circumstances of the offense, the child's background, the applicable sentencing provisions, and other information pertinent to the disposition;
3. to ensure all reasonably available mitigating and favorable information, which is likely to benefit the child, is presented to the court;
4. to consider preparing a letter or memorandum to the judge or juvenile probation officer that highlights the child's strengths and the appropriateness of the disposition plan proposed by the defense; and
5. where a defendant chooses not to proceed to disposition, to ensure that a plea agreement is negotiated

with consideration of the disposition hearing, correctional, financial and collateral implications;

B. The attorney should be familiar with disposition provisions and options applicable to the case, including but not limited to:

1. any disposition assessment tools;
2. detention including any mandatory minimum requirements;
3. deferred disposition and diversionary programs;
4. probation or suspension of disposition and permissible conditions of probation;
5. credit for pre-adjudication detention;
6. restitution;
7. commitment to the Office of Juvenile Justice at a residential or non-residential program;
8. place of confinement and level of security and classification criteria used by Office of Juvenile Justice;
9. eligibility for correctional and educational programs; and
10. availability of drug rehabilitation programs, psychiatric treatment, health care, and other treatment programs.

C. The attorney should be familiar with the direct and collateral consequences of adjudication and the disposition, including:

1. the impact of a fine or restitution and any resulting civil liability;
2. possible revocation of probation or parole if client is serving a prior sentence on a parole status;
3. future enhancement on dispositions;
4. loss of participation in extra-curricular activities;
5. loss of college scholarships;
6. suspension or expulsion from school;
7. the inability to be employed in certain occupations including the military;
8. suspension of a motor vehicle operator's permit or license;
9. ineligibility for various government programs (e.g., student loans) or the loss of public housing or other benefits;
10. the requirement to register as a sex offender;
11. the requirement to submit a DNA sample;
12. deportation/removal and other immigration consequences;
13. the loss of other rights (e.g., loss of the right to vote, to carry a firearm or to hold public office);
14. the availability of juvenile arrest or court records to the public, in certain cases; or
15. the transmission of juvenile arrest records, court records, or identifying information to federal law enforcement agencies.

D. The attorney should be familiar with disposition hearing procedures, including:

1. the effect that plea negotiations may have upon the disposition discretion of the court and/or the Office of Juvenile Justice;
2. the availability of an evidentiary hearing and the applicable rules of evidence and burdens of proof at such a hearing;
3. the use of "victim impact" evidence at any disposition hearing;
4. the right of the child to speak prior to receiving the disposition;

5. any discovery rules and reciprocal discovery rules that apply to disposition hearings; and

6. the use of any sentencing guidelines.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1507. Preparing the Child for the Disposition Hearing

A. In preparing for the disposition hearing, counsel should consider the need to:

1. explain to the child the nature of the disposition hearing, the issues involved, the applicable sentencing requirements, disposition options and alternatives available to the court, and the likely and possible consequences of the disposition alternatives;
2. explain fully and candidly to the child the nature, obligations, and consequences of any proposed dispositional plan, including the meaning of conditions of probation or conditional release, the characteristics of any institution to which commitment is possible, and the probable duration of the child's responsibilities under the proposed dispositional plan;
3. obtain from the child relevant information concerning such subjects as his or her background and personal history, prior criminal or delinquency record, employment history and skills, education, and medical history and condition, and obtain from the child sources through which the information provided can be corroborated;
4. prepare the child to be interviewed by the official preparing the predisposition report, including informing the child of the effects that admissions and other statements may have upon an appeal, retrial or other judicial proceedings, such as forfeiture or restitution proceedings;
5. inform the client of his or her right to speak at the disposition hearing and assist the client in preparing the statement, if any, to be made to the court, considering the possible consequences that any admission to committing delinquent acts may have upon an appeal, subsequent retrial or trial on other offenses;
6. when psychological or psychiatric evaluations are ordered by the court or arranged by the attorney prior to disposition, the attorney should explain the nature of the procedure to the child and the potential lack of confidentiality of disclosures to the evaluator;
7. ensure the child has adequate time to examine the predisposition report, if one is utilized by the court; and
8. maintain regular contact with the child prior to the disposition hearing and inform the client of the steps being taken in preparation for disposition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1509. Predisposition Report

A. Where the court uses a predisposition report, counsel should be familiar with the procedures concerning the preparation, submission, and verification of the predisposition report. Counsel should be prepared to use the predisposition report in defense of the child.

B. Counsel should be familiar with the practices of the officials who prepare the predisposition report and the defendant's rights in that process, including access to the

predisposition report by the attorney and the child, and ability to waive such a report, if it is in the child's interest to do so.

C. Counsel should provide to the official preparing the report relevant information favorable to the client, including, where appropriate, the child's version of the alleged act. Counsel should also take appropriate steps to ensure that erroneous or misleading information which may harm the child is deleted from the report and to preserve and protect the child's interests, including requesting that a new report be prepared with the challenged or unproven information deleted before the report or memorandum is distributed to the Office of Juvenile Justice or treatment officials.

D. In preparation for a disposition hearing, the attorney should ensure receipt of the disposition report no later than 72 hours prior to the disposition hearing. Upon receipt of this report, the attorney should review the report with the client, ensure its accuracy and prepare a response to the report.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1511. Prosecution's Disposition Position

A. The attorney should attempt to determine, unless there is a sound tactical reason for not doing so, whether the prosecution will advocate that a particular type or length of disposition be imposed and attempt to persuade the district attorney to support the child's requested disposition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1513. Disposition Hearing

A. The attorney should be prepared at the disposition hearing to take the steps necessary to advocate fully for the requested disposition and to protect the child's interest.

B. Where the dispositional hearing is not separate from adjudication or where the court does not have before it all evidence required by statute, rules of court or the circumstances of the case, the lawyer should seek a continuance until such evidence can be presented if to do so would serve the child's interests.

C. The lawyer at disposition should examine fully and, where possible, impeach any witness whose evidence is damaging to the child's interests and to challenge the accuracy, credibility, and weight of any reports, written statements, or other evidence before the court. The lawyer should not knowingly limit or forego examination or contradiction by proof of any witness, including a social worker or probation department officer, when failure to examine fully will prejudice the child's interests. Counsel should seek to compel the presence of witnesses whose statements of fact or opinion are before the court or the production of other evidence on which conclusions of fact presented at disposition are based.

D. Where information favorable to the child will be disputed or challenged, the attorney should be prepared to present supporting evidence, including testimony of witnesses, to establish the facts favorable to the child.

E. Where the court has the authority to do so, counsel should request specific recommendations from the court concerning the place of detention, probation or suspension of

part or all of the sentence, psychiatric treatment or drug rehabilitation.

F. During the hearing if the court is indicating a commitment is likely, the attorney should attempt to ensure that the child is placed in the most appropriate, least restrictive placement available.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1515. Post-disposition Counseling

A. When a disposition order has been entered, it is the attorney's duty to explain the nature, obligations and consequences of the disposition to the child and to urge upon the child the need for accepting and cooperating with the dispositional order. The child should also understand the consequences of a violation of the order.

B. Where the court places the child in the custody of the Office of Juvenile Justice, with the child's permission and a parent's written release, the attorney should provide the Office of Juvenile Justice with a copy of the child's education records.

C. If appeal from either the adjudicative or dispositional decree is contemplated, the child should be advised of that possibility, but the attorney shall counsel compliance with the court's decision during the interim.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1517. Reviewing or Drafting Court Orders

A. Counsel's attorney should review all written orders or when necessary draft orders to ensure that the child's interests are protected, to ensure the orders are clear and specific, and to ensure the order accurately reflects the court's oral pronouncement and complies with the applicable law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1519. Monitoring the Child's Post-disposition Detention

A. The attorney should monitor the child's post-disposition detention status and ensure that the child is placed in a commitment program in a timely manner as provided by law.

B. When a child is committed to a program, the attorney shall provide the child information on how to contact the attorney to discuss concerns.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1521. Post-Disposition Representation

A. The lawyer's responsibility to the child does not end with the entry of a final dispositional order. Louisiana law entitles juveniles to representation at every stage of the proceeding, including post-disposition matters. The attorney should be prepared to counsel and render or assist in securing appropriate legal services for the child in matters arising from the original proceeding.

B. The lawyer engaged in post-dispositional representation should conduct those proceedings according

to the principles generally governing representation in juvenile court matters. The attorney should be prepared to actively participate in hearings regarding probation status. When a child is committed to a program and the attorney receives notice of an Office of Juvenile Justice transfer staffing or decision, the attorney should review and challenge the decision and, if appropriate, bring the matter to the trial court.

C. Where the lawyer is aware that the child or the child's family needs and desires community or other medical, psychiatric, psychological, social or legal services, he or she may render assistance in arranging for such services.

D. The lawyer should contact both the child and the agency or institution involved in the disposition plan at regular intervals in order to ensure that the child's rights are respected and, where necessary, to counsel the child and the child's family concerning the dispositional plan.

E. Even after an attorney's representation in a case is complete, the attorney should comply with a child's reasonable requests for information and materials.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1523. Child's Right to Appeal

A. Following a delinquency adjudication, the attorney should inform the child of his or her right to appeal the judgment of the court and the action that must be taken to perfect an appeal. This discussion should include the details of the appellate process including the time frames of decisions, the child's obligations pending appeal, and the possibility of success on appeal.

B. Counsel representing the child following a delinquency adjudication should promptly undertake any factual or legal investigation in order to determine whether grounds exist for relief from juvenile court or administrative action. If there is reasonable prospect of a favorable result, the lawyer should advise the child of the nature, consequences, probable outcome, and advantages or disadvantages associated with such proceedings.

C. After disposition, the attorney should consider filing a motion to reconsider the disposition. The attorney should consider an appeal of the disposition where appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1525. Counsel's Participation in Appeal

A. A lawyer who has represented a client through adjudication shall be prepared to continue representation in appellate actions, whether affirmative or defensive, unless new counsel is appointed at the request of the client or, in the case of a felony-grade delinquency matter, the trial attorney appropriately utilizes the services of the Louisiana Appellate Project, to the extent those appellate services are available.

B. Whether or not trial counsel expects to conduct the appeal, he or she shall promptly inform the child of the right to appeal and take all steps necessary to protect that right until appellate counsel is substituted or the child decides not to exercise this privilege.

C. If after such consultation and if the child wishes to appeal the order, the lawyer should take all steps necessary to perfect the appeal and seek appropriate temporary orders or extraordinary writs necessary to protect the interests of the client during the pendency of the appeal.

D. In circumstances where the child wants to file an appeal, the attorney should file the notice in accordance with the rules of the court and take such other steps as are necessary to preserve the defendant's right to appeal, such as ordering transcripts of the trial proceedings.

E. Where the child indicates a desire to appeal the judgment and/or disposition of the court, counsel should consider requesting a stay of execution of any disposition, particularly one involving out-of-home placement or secure care. If the stay is denied, the attorney should consider appealing the stay. The attorney should also inform the child of any right that may exist to be released on bail pending the disposition of the appeal. Where an appeal is taken and the child requests bail pending appeal, trial counsel should cooperate with appellate counsel in providing information to pursue the request for bail.

F. Where the child takes an appeal, trial counsel should cooperate in providing information to appellate counsel (where new counsel is handling the appeal) concerning the proceedings in the trial court.

G. Where there exists an adequate pool of competent counsel available for assignment to appeals from juvenile court orders and substitution will not work substantial disadvantage to the child's interests, new counsel may be appointed in place of trial counsel.

H. When the appellate decision is received, the attorney or substitute appellate counsel should explain the outcome of the case to the client.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1527. Probation Revocation Representation

A. Trial counsel should be prepared to continue representation if revocation of the child's probation or parole is sought, unless new counsel is appointed.

B. The attorney appointed to represent the child charged with a violation of probation should prepare in the same way and with as much care as for an adjudication. The attorney should:

1. conduct an in-person interview with the child;
2. review the probation department file;
3. identify, locate and interview exculpatory or mitigating witnesses;
4. consider reviewing the child's participation in mandated programs; and
5. consider obtaining expert assistance to test the validity of relevant scientific evidence (e.g., urinalysis results).

C. In preparing for a probation revocation, the attorney should be familiar with all the procedural protections available to the child including but not limited to discovery, cross-examination, compelling witnesses and timely filing of violations.

D. When representing a child in a revocation of probation hearing who was not a client of the attorney at the

initial adjudication, the attorney should find out if the child was represented by an attorney in the underlying offense for which the child was placed on probation. The attorney may have an argument if the child entered an admission without counsel and did not give a valid waiver of counsel.

E. The attorney should prepare the child for the probation revocation hearing including the possibility of the child or parent being called as witnesses by the State. The attorney should also prepare the child for all possible consequences of a decision to enter a plea or the consequences of a probation revocation.

F. In preparing for the probation revocation, the attorney should prepare alternative dispositions including the possibility of negotiated alternatives such as a pre-hearing contempt proceeding or an additional disposition short of revocation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:

§1529. Challenges to the Effectiveness of Counsel

A. Where a lawyer appointed or retained to represent a child previously represented by other counsel has a good faith belief that prior counsel did not provide effective assistance, the child should be so advised and any appropriate relief for the child on that ground should be pursued.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, 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 a positive impact on family functioning, stability, and autonomy as described in R.S. 49:972 by helping to ensure that indigent parents and/or their children accused of capital offenses will receive quality legal representation, thereby helping the family unit during a time of crisis.

Small Business Statement

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Public Comments

Interested persons who wish to submit data, views, comments, or arguments may do so by writing to Jean M. Faria, State Public Defender, 500 Laurel St., Ste. 300, Baton Rouge, LA 70801. Written comments will be accepted through 4:30 p.m. on Thursday, April 21, 2011.

Jean M. Faria
State Public Defender

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Trial Court Performance Standards for Attorneys Representing Children in Delinquency

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no anticipated implementation costs or savings to the state or local government units, as the objective of the proposed rules is to increase the quality of representation without increasing costs to the Louisiana Public Defender Board. Training will be provided at no cost to public defender attorneys. It is conceivable that District Public Defenders may incur some costs associated with travel (i.e., mileage, meals and lodging) if public defender attorneys working for them are required to travel to attend training.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no impact on state or local revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

These proposed rules adopt provisions establishing mandatory guidelines and performance standards for the defense of children in delinquency proceedings. It is anticipated that implementation of these proposed rules will have minimal economic cost for public defender attorneys who must meet training requirements. The cost is indeterminable since training will be provided at no cost to such public defender attorneys. However, in the event District Public Defenders do not pay travel costs for public defender attorneys who work for them, it is conceivable that the individual public defender attorneys may incur some travel costs if they are required to travel to attend training.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

These proposed rules should not affect competition or employment.

Jean M. Faria
State Public Defender
1103#011

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Board of Veterinary Medicine

Prescribing and Dispensing Drugs—Preceptorship Program (LAC 46:LXXXV.705 and 1105)

The Louisiana Board of Veterinary Medicine proposes to amend LAC 46:LXXXV.705 and 1105 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953 et seq., and the Louisiana Veterinary Practice Act, R.S. 37:1518(A)(9). The proposed Rules are being amended and adopted to implement specific requirements regarding a written prescription for a controlled drug issued by a prescribing veterinarian; to clarify the requirements for waiver of the preceptorship program necessary for licensure; and to provide administrative recourse for the board resulting from the submission of an unfavorable evaluation of a preceptee submitted by a preceptor, as well as the right to appeal a decision of the board by the preceptee.

Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS

Part LXXXV. Veterinarians

Chapter 7. Veterinary Practice

§705. Prescribing and Dispensing Drugs

A. - K.9. ...

L. The initial prescription of a legend drug shall be communicated personally or by telephone to the pharmacy by the veterinarian. The initial prescription and any refills of a controlled drug shall be communicated personally or by telephone to the pharmacy by the veterinarian. A written prescription for a controlled drug shall be personally prepared by the prescribing veterinarian. A written prescription for a controlled drug shall be handwritten or typed, and shall contain the specific client/patient's names (or identifying information if herd, etc.) and the drug(s) prescribed with usage directions, appropriate government registration numbers, dated, and signed by the prescribing veterinarian, affixed with his signature stamp, or electronic signature thereon if transmitted electronically to a pharmacy. However, the use of a signature stamp or electronic signature will have the presumption the prescribing veterinarian knows of, and has personally provided, the prescription for the use of the patient.

M. - O.12. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Veterinary Medicine, LR 6:71 (February 1980), amended by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:225 (March 1990), LR 19:1329 (October 1993) LR 20:1381 (December 1994), LR 23:1686 (December 1997), LR 24:1932 (October 1998), LR 25:1249 (July 1999), LR 25:1627 (September 1999), LR 27:51 (January 2001), LR 30:797 (April 2004), LR 37:

Chapter 11. Preceptorship Program

§1105. Applicants

A. - D. ...

E. The board shall have the discretionary right to waive compliance with the preceptorship program when the applicant has been licensed in another state or is eligible for a license without examination, and provides written proof of employment as a licensed veterinarian in a full time, clinical practice for a minimum of 90 days for the period immediately prior to submission of the license application to the board.

F. The board shall have the discretionary right to require a preceptee, who has received an unfavorable evaluation, to repeat the preceptorship program requirement for licensure, in its entirety or partially, with another preceptor selected by the preceptee and pre-approved by the board. If the preceptee is thereafter unable to obtain a favorable evaluation, the board shall have the discretionary right to deny licensure. Any decision made by the board pursuant to this subsection shall be subject to appeal and review in accordance with LAC 46:LXXXV.105.B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:232

(March 1990), amended LR 23:1686 (December 1997), LR 24:942 (May 1998), LR 27:543 (April 2001), LR 37:

Family Impact Statement

The proposed rules have no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Public Comments

Interested parties may submit written comments to Wendy D. Parrish, Executive Director, Louisiana Board of Veterinary Medicine, 263 Third Street, Suite 104, Baton Rouge, LA 70801, or by facsimile to (225) 342-2142. Comments will be accepted through the close of business on April 22, 2011.

Public Hearing

If it becomes necessary to convene a public hearing to receive comments in accordance with the Administrative Procedure Act, the hearing will be held on Thursday, April 28, 2011, at 10 a.m. at the office of the Louisiana Board of Veterinary Medicine, 263 Third Street, Suite 104, Baton Rouge, LA.

Wendy D. Parrish
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

RULE TITLE: Prescribing and Dispensing Drugs;
Preceptorship Program

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There will be no costs or savings to state or local governmental units, except for those associated with publishing the amendment (estimated at \$300 in FY 2011). Licensees and certificate holders will be informed of this rule change via the board's regular newsletter or other direct mailings, and the Board's website, which result in minimal costs to the Board.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections of state or local governmental units as no increase in fees will result from the amendment.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rules implement changes to sections 705L, 1105E and 1105F of LAC 46:LXXXV. Section 705L implements specific requirements regarding a written prescription for a controlled drug issued by a prescribing veterinarian and will have no costs and/or economic impact for the prescribing veterinarian issuing the prescription, and no costs and/or economic impact to the consumer or any non-governmental group. Section 1105E clarifies the requirements for waiver of the preceptorship program and will have no costs and/or economic impact other than allowing an applicant for licensure to enter the workforce as a licensed veterinarian sooner if the waiver is granted, and no costs and/or economic impact to the consumer or any non-governmental group. Section 1105F establishes the administrative recourse for the board resulting from the submission of an unfavorable evaluation of a preceptee submitted by a preceptor, as well as the right to appeal a decision of the board by the preceptee, and will have no economic impact for the preceptor veterinarian, and none for the preceptee who must repeat the program since

the participant is financially compensated for his services rendered during the program by the preceptor veterinarian. There will be no economic impact to the consumer or any non-governmental group regarding a repeat of the preceptorship program by a preceptee.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No impact on competition and employment is anticipated as a result of the proposed rule.

Wendy D. Parrish
Executive Director
1103#053

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Bureau of Health Services Financing
and
Office of Aging and Adult Services**

**All Inclusive Care for the Elderly
Reimbursement Rate Reduction
(LAC 50:XXIII.1301)**

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services propose to amend LAC 50:XXIII.1301 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, Office of the Secretary, Bureau of Health Services Financing amended the provisions governing the Program of All Inclusive Care for the Elderly (PACE) to: 1) remove the requirement that eligibility decisions be approved by the state administering agency; 2) revise PACE disenrollment criteria; 3) allow for service area specific rates instead of one statewide rate; and 4) clarify when the obligation for patient liability begins (*Louisiana Register*, Volume 33, Number 5).

As a result of a budgetary shortfall in state fiscal year 2011, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for PACE to reduce the capitated amounts paid to PACE organizations (*Louisiana Register*, Volume 36, Number 8). Due to a continuing budgetary shortfall in state fiscal year 2011, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for PACE to further reduce the capitated

amount paid to PACE organizations (*Louisiana Register*, Volume 37, Number 1). This proposed Rule is being promulgated to continue the provisions of the August 1, 2010 and the January 1, 2011 Emergency Rules.

Title 50

**PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXIII. All Inclusive Care for the Elderly**

Chapter 13. Reimbursement

§1301. Payment

A. - J.3. ...

K. Effective for dates of service on or after August 1, 2010, the monthly capitated amount paid to a PACE organization shall be reduced by 2 percent of the capitated amount on file as of July 31, 2010.

L. Effective for dates of service on or after January 1, 2011, the monthly capitated amount paid to a PACE organization shall be reduced by 3.09 percent of the capitated amount on file as of December 31, 2010.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act and 42 CFR 460 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:250 (February 2004), amended LR 33:850 (May 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, 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 PACE 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 Thursday, April 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: All Inclusive Care for the Elderly
Reimbursement Rate Reduction**

NOTICE OF INTENT

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

**Ambulatory Surgical Centers
Reimbursement Rate Reduction
(LAC 50:XI.7503)**

**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 to the state of \$81,761 for FY 10-11, \$153,972 for FY 11-12 and \$156,315 for FY 12-13. It is anticipated that \$328 (\$164 SGF and \$164 FED) will be expended in FY 10-11 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 \$242,497 for FY 10-11, \$348,220 for FY 11-12 and \$360,943 for FY 12-13. It is anticipated that \$164 will be expended in FY 10-11 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 the January 1, 2011 emergency rules, amends the provisions governing the Program for All Inclusive Care for the Elderly (PACE) to reduce the capitated amount paid to PACE organizations (approximately 2,840 service units). It is anticipated that implementation of this proposed rule will decrease program expenditures in the Medicaid Program by approximately \$324,586 for FY 10-11, \$502,192 for FY 11-12 and \$517,258 for FY 12-13.

**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 PACE organizations. The reduction in payments may adversely impact the financial standing of these organizations and could possibly cause a reduction in employment opportunities.

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:XI.7503 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 ambulatory surgical centers to further reduce the reimbursement rates paid for ambulatory surgical services (*Louisiana Register*, Volume 36, Number 10). 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 ambulatory surgical centers to reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 8). The department promulgated an Emergency Rule which amended the provisions of the August 1, 2010 Emergency Rule in order to revise the formatting of LAC 50:XI.7503 as a result of the promulgation of the October 20, 2010 final Rule governing ambulatory surgical centers (*Louisiana Register*, Volume 36, Number 11).

Due to a continuing budgetary shortfall in state fiscal year 2011, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for ambulatory surgical centers 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.

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

Don Gregory
Medicaid Director
1103#105

Evan Brasseaux
Staff Director
Legislative Fiscal Office

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.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XI. Clinic Services

Subpart 11. Ambulatory Surgical Centers

Chapter 75. Reimbursement

§7503. Reimbursement Methodology

A. - D. ...

E. Effective for dates of service on or after August 1, 2010, the reimbursement for surgical services provided by an ambulatory surgical center shall be reduced by 4.4 percent of the fee amounts on file as of July 31, 2010.

F. Effective for dates of service on or after January 1, 2011, the reimbursement for surgical services provided by an ambulatory surgical center 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 35:1889 (September 2009), amended LR 36:2278 (October 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 proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, April 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

1103#106

NOTICE OF INTENT

Department of Health and Hospitals Bureau of Health Services Financing

Early and Periodic Screening, Diagnosis and Treatment
Dental Program

Covered Services and Reimbursement Rate Reduction
(LAC 50:XV.6903 and 6905)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50: XV.6903 and §6905 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 dental services in the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program to reduce the reimbursement fees (*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 EPSDT dental services to further reduce the reimbursement rates. In addition, this Emergency Rule also amended the provisions governing the covered services and reimbursement methodology for the EPSDT Dental Program to include an additional dental procedure (*Louisiana Register*, Volume 36, Number 8). 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.6905 as a result of the promulgation of the September 20, 2010 final Rule governing EPSDT dental 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 EPSDT dental 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 the January 1, 2011 Emergency Rules.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 5. Early and Periodic Screening, Diagnosis and Treatment

Chapter 69. Dental Services

§6903. Covered Services

A. - D. ...

E. Effective August 1, 2010, the prefabricated esthetic coated stainless steel crown-primary tooth dental procedure shall be included in the service package for coverage under the EPSDT Dental 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, Office of the Secretary, Bureau of Health Services Financing, LR 29:175 (February 2003), amended LR 30:252 (February 2004), LR 31:667 (March 2005), LR 33:1138 (June 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1889 (September 2009), amended LR 37:

§6905. Reimbursement

A. - D.3. ...

E. Effective for dates of service on or after August 1, 2010, the reimbursement fees for EPSDT dental services 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 following oral evaluation services:

- a. periodic oral examination;
- b. oral examination—patients under three years of age; and
- c. comprehensive oral examination—new patient;

2. 65 percent for the following annual and periodic diagnostic and preventive services:

- a. radiographs—periapical, first film;
- b. radiograph—periapical, each additional film;
- c. radiograph—panoramic film;
- d. prophylaxis—adult and child;
- e. topical application of fluoride—adult and child (prophylaxis not included); and
- f. topical fluoride varnish, therapeutic application for moderate to high caries risk patients (under 6 years of age);

3. 50 percent for the following diagnostic and adjunctive general services:

- a. oral/facial images;
- b. non-intravenous conscious sedation; and
- c. hospital call; and

4. 58 percent for the remainder of the dental services.

F. Removable prosthodontics and orthodontic services are excluded from the August 1, 2010 rate reduction.

G. Effective for dates of service on and after January 1, 2011, the reimbursement fees for EPSDT dental services 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 following oral evaluation services:

- a. periodic oral examination;
- b. oral Examination—patients under 3 years of age; and
- c. comprehensive oral examination—new patients;

2. 63.5 percent for the following annual and periodic diagnostic and preventive services:

- a. radiographs—periapical, first film;
- b. radiographs—periapical, each additional film;
- c. radiographs—panoramic film;
- d. diagnostic casts;
- e. prophylaxis—adult and child;
- f. topical application of fluoride, adult and child (prophylaxis not included); and
- g. topical fluoride varnish, therapeutic application for moderate to high caries risk patients (under 6 years of age);

3. 73.5 percent for accession of tissue, gross and microscopic examination, preparation and transmission of written report;

4. 70.9 percent for accession of tissue, gross and microscopic examination, including assessment of surgical margins for presence of disease, preparation and transmission of written report;

5. 50 percent for the following diagnostic and adjunctive general services:

- a. oral/facial image;
- b. non-intravenous conscious sedation; and
- c. hospital call; and

6. 57 percent for the remainder of the dental services.

H. Removable prosthodontics and orthodontic services are excluded from the January 1, 2011 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 33:1138 (June 2007), amended LR 34:1032 (June 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1890 (September 2009), amended LR 36:2040 (September 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 Thursday, April 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: Early and Periodic Screening, Diagnosis and Treatment—Dental Program—Covered 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 \$1,575,652 for FY 10-11, \$2,767,234 for FY 11-12 and \$2,809,347 for FY 12-13. It is anticipated that \$656(\$328 SGF and \$328 FED) will be expended in FY 10-11 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 \$4,667,669 for FY 10-11, \$6,258,317 for FY 11-12 and \$6,486,971 for FY 12-13. It is anticipated that \$328 will be expended in FY 10-11 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 Early and Periodic Screening, Diagnosis and Treatment (EPSDT) dental services to further reduce the reimbursement rates (approximately 2,500,000 units of service) and adds an additional covered service. It is anticipated that implementation of this proposed rule will decrease program expenditures in the Medicaid Program by approximately \$6,243,977 for FY 10-11, \$9,025,551 for FY 11-12 and \$9,296,318 for FY 12-13.

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 reimbursement fees paid for EPSDT dental services. The reduction in payments may adversely impact the financial standing of dentists and could possibly cause a reduction in employment opportunities.

Don Gregory
Medicaid Director
1103#107

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Early and Periodic Screening, Diagnosis and Treatment
Health Services
EarlySteps Reimbursement Rate Reduction
(LAC 50:XV.7107)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:XV.7107 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 the allocation of additional funds during the 2008 Regular Session of the Louisiana Legislature, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the provisions governing Early and Periodic Screening, Diagnosis and Treatment (EPSDT) health services to increase the reimbursement rates paid for certain services rendered to infants and toddlers in the EarlySteps Program (*Louisiana Register*, Volume 35, Number 1). As a result of a budgetary shortfall in state fiscal year 2011, the department promulgated an Emergency Rule which amended the provisions governing the EPSDT Program to reduce the reimbursement rates paid for certain health services rendered in the EarlySteps Program (*Louisiana Register*, Volume 37, Number 1). This proposed Rule is being promulgated to continue the provisions of the January 1, 2011 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services to Special Populations

Subpart 5. Early and Periodic Screening, Diagnosis and Treatment

Chapter 71. Health Services

§7107. EarlySteps Reimbursement

A. - B.2.e. ...

C. Effective for dates of service on or after January 1, 2011, the reimbursement for certain Medicaid-covered health services rendered in the EarlySteps Program shall be reduced by 2 percent of the rate in effect on December 31, 2010.

1. The following services rendered in the natural environment shall be reimbursed at the reduced rate:

- a. audiology services;
- b. speech pathology services;
- c. occupational therapy;
- d. physical therapy; and
- e. psychological services.

2. Services rendered in special purpose facilities/inclusive child care and center-based special purpose facilities shall be excluded from this 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 30:800 (April 2004), amended LR 31:2030 (August 2005), LR 35:69 (January 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 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 Thursday, April 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: Early and Periodic Screening, Diagnosis and Treatment—Health Services—EarlySteps 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 \$14,134 for FY 10-11, \$47,706 for FY 11-12 and \$48,432 for FY 12-13. It is anticipated that \$328 (\$164 SGF and \$164 FED) will be expended in FY 10-11 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 \$42,187 for FY 10-11, \$107,890 for FY 11-12 and \$111,832 for FY 12-13. It is anticipated that \$164 will be expended in FY 10-11 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 January 1, 2011 emergency rule, amends the provisions governing the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program to reduce the reimbursement rates paid for health services provided in the EarlySteps Program (approximately 230,000 services annually). It is anticipated that implementation of this proposed rule will reduce expenditures in the EPSDT Program by approximately \$56,649 for FY 10-11, \$155,596 for FY 11-12 and \$160,264 for FY 12-13.

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 providers for EPSDT health 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
1103#108

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Bureau of Health Services Financing

End Stage Renal Disease Facilities
Reimbursement Rate Reduction
(LAC 50:XI.6901 and 6903)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:XI.6901 and §6903 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 end stage renal disease (ESRD) facilities to reduce the reimbursement rates (*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 ESRD facilities to further reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 8). The department promulgated an Emergency Rule which amended the provisions of the August 1, 2010 Emergency Rule in order to revise the formatting of LAC 50:XI.6901-6903 as a result of the promulgation of the September 20, 2010 final Rule (*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 ESRD facilities 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 XI. Clinic Services

Subpart 9. End Stage Renal Disease Facilities

Chapter 69. Reimbursement

§6901. General Provisions

A. End stage renal disease (ESRD) facilities are reimbursed a hemodialysis composite rate. The composite rate is a comprehensive payment for the complete hemodialysis treatment in which the facility assumes responsibility for providing all medically necessary routine dialysis services.

B. - D. ...

E. Effective for dates of service on or after August 1, 2010, the reimbursement to ESRD facilities shall be reduced by 4.6 percent of the rates in effect on July 31, 2010.

F. Effective for dates of service on or after January 1, 2011, the reimbursement to ESRD facilities shall be reduced by 2 percent of the rates in effect on 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 30:1022 (May 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1891 (September 2009), LR 36:2040 (September 2010), LR 37:

§6903. Medicare Part B Claims

A. - D. ...

E. Effective for dates of service on or after August 1, 2010, the reimbursement to ESRD facilities for Medicare Part B claims shall be reduced by 4.6 percent of the rates in effect on July 31, 2010.

F. Effective for dates of service on or after January 1, 2011, the reimbursement to ESRD facilities for Medicare Part B claims shall be reduced by 2 percent of the rates in effect on 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 35:1891 (September 2009), amended LR 36:2040 (September 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 Thursday, April 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: End Stage Renal Disease Facilities
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 \$363,751 for FY 10-11, \$668,147 for FY 11-12 and \$678,315 for FY 12-13. It is anticipated that \$410 (\$205 SGF and \$205 FED) will be expended in FY 10-11 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 \$1,077,819 for FY 10-11, \$1,511,067 for FY 11-12 and \$1,566,275 for FY 12-13. It is anticipated that \$205 will be expended in FY 10-11 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 end stage renal disease facilities to reduce the reimbursement rates (approximately 150 facilities). It is anticipated that implementation of this proposed rule will decrease program expenditures in the Medicaid Program by approximately \$1,441,980 for FY 10-11, \$2,179,214 for FY 11-12 and \$2,244,590 for FY 12-13.

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 end

stage renal disease facilities. The reduction in payments may adversely impact the financial standing of end stage renal disease facilities and could possibly cause a reduction in employment opportunities.

Don Gregory
Medicaid Director
1103#109

Evan Brasseaux
Staff Director
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Health and Hospitals Bureau of Health Services Financing

Family Planning Clinics Reimbursement Rate Reduction (LAC 50:XI.3501)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:XI.3501 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 Human Resources, Office of Family Services adopted a Rule which established the method of payment for services rendered by mental health clinics, substance abuse clinics and family planning clinics (*Louisiana Register*, Volume 4, Number 5). The provisions governing family planning clinic services were repromulgated in their entirety for inclusion in the *Louisiana Administrative Code* (*Louisiana Register*, Volume 30, Number 5).

As a result of a budgetary shortfall in state fiscal year 2011, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for family planning clinics in order to reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 8). This proposed Rule is being promulgated to continue the provisions of the August 1, 2010 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XI. Clinic Services

Subpart 5. Family Planning

Chapter 35. Reimbursement

§3501. Reimbursement Methodology

A. The reimbursement for family planning clinics is a flat fee for each covered service as specified on the established Medicaid fee schedule. Fee schedule rates are based on a percentage of the Louisiana Medicare Region 99 allowable for a specified year.

1. - 2. Repealed.

B. Effective for dates of service on or after August 1, 2010, the reimbursement rates for family planning clinic services shall be 75 percent of the 2009 Louisiana Medicare Region 99 allowable or billed charges, whichever is the lesser amount minus any third party liability coverage.

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 30:1022 (May 2004), 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 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 Thursday, April 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: Family Planning Clinics 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 to the state of \$26,721 for FY 10-11, \$42,490 for FY 11-12 and \$43,137 for FY 12-13. It is anticipated that \$328 (\$164 SGF and \$164 FED) will be expended in FY 10-11 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 \$79,468 for FY 10-11, \$96,094 for FY 11-12 and \$99,605 for FY 12-13. It is anticipated that \$164 will be expended in FY 10-11 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 emergency rule, amends the provisions governing the reimbursement methodology for family planning clinics to reduce the reimbursement rates (approximately 60,250 services annually). It is anticipated that implementation of this proposed rule will reduce expenditures in the Medicaid Program for family planning clinic services by approximately \$106,517 for FY 10-11, \$138,584 for FY 11-12 and \$142,742 for FY 12-13.

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 Family Planning Clinics. 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
1103#110

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

**Nursing Facilities—Reimbursement Methodology
Direct Care Multiplier and Fair Rental Value Component
(LAC 50:II.20005)**

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:II.20005 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 anticipation of projected expenditures in the Medical Vendor Program exceeding the funding allocated in the General Appropriations Act for state fiscal year 2011, the department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for nursing facilities to reduce the per diem rates paid to non-state nursing facilities (*Louisiana Register*, Volume 37, Number 3).

Act 150 of the 2010 Regular Session of the Louisiana Legislature directed the department to amend the case mix reimbursement methodology for nursing facilities to revise the provisions governing the direct care and care related

costs, to change the minimum occupancy penalty, and to provide for changes in the frequency of rate rebasing and related matters. In compliance with the directives of Act 150, the department now proposes to amend the provisions governing the reimbursement methodology for nursing facilities to increase the direct care and care related price multiplier, provide for the exclusion of certain costs from the direct care and care related median cost, and to increase the fair rental value minimum occupancy percentage.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part II. Nursing Facilities

Subpart 5. Reimbursement

Chapter 200. Reimbursement Methodology

§20005. Rate Determination [Formerly LAC

50:VII.1305]

A. - D.1.c. ...

d. Effective July 1, 2011, the statewide direct care and care related price is established at 112.40 percent of the direct care and care related resident-day-weighted median cost.

e. The statewide direct care and care related floor is established at 94 percent of the direct care and care related resident-day-weighted median cost. For periods prior to January 1, 2007, the statewide direct care and care related floor shall be reduced to 90 percent of the direct care and care related resident-day-weighted median cost in the event that the nursing wage and staffing enhancement add-on is removed. Effective January 1, 2007, the statewide direct care and care related floor shall be reduced by one percentage point for each 30 cent reduction in the average Medicaid rate due to a budget reduction implemented by the department. The floor cannot be reduced below 90 percent of the direct care and care related resident-day-weighted median cost.

i. Effective July 1, 2011, specialized care services costs that are reimbursed through a separate per diem or add-on payment shall be excluded from the direct care and care related resident-day-weighted median cost component.

D.1.f. - D.3.b.ii. ...

iii. Effective July 1, 2011, the nursing facility's annual fair rental value shall be divided by the greater of the facility's annualized actual resident days during the cost reporting period or 85 percent of the annualized licensed capacity of the facility to determine the FRV per diem or capital component of the rate. Annualized total patient days will be adjusted to reflect any increase or decrease in the number of licensed beds as of the date of rebase by applying to the increase or decrease the greater of the facility's actual occupancy rate during the base year cost report period or 85 percent of the annualized licensed capacity of the facility.

D.3.b.iv. - G ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 46:2742, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 10:467 (June 1984), repealed and promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1791 (August 2002), amended LR 31:1596 (July 2005), LR 32:2263 (December 2006), LR 33:2203 (October 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:325 (February 2010), repromulgated LR 36:520 (March 2010),

amended LR 36:1556 (July 2010), amended LR 36:1782 (August 2010), amended LR 36:2566 (November 2010), 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 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 Thursday, April 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

is anticipated that \$205 will be expended in FY 10-11 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 amends the provisions governing the reimbursement methodology for nursing facilities to increase the direct care and care related price multiplier, provide for the exclusion of certain costs from the direct care and care related median cost, and to increase the fair rental value minimum occupancy percentage as directed by Act 150 of the 2010 Regular Session of the Louisiana Legislature (approximately 6,500,000 total Medicaid days annually). It is anticipated that implementation of this proposed rule will reduce program expenditures in the Medicaid Program by approximately \$195,000 for FY 11-12. The impact on program expenditures in FY 12-13 and future fiscal years is unknown due to changes in nursing facility occupancy. To the extent that nursing facility occupancy increases, the savings reflected in FY 11-12 could decrease.

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
1103#111

Evan Brasseaux
Staff Director
Legislative Fiscal Office

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Nursing Facilities—Reimbursement
Methodology—Direct Care Multiplier and Fair Rental
Value Component**

NOTICE OF INTENT

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

Outpatient Hospital Services
Duration of Outpatient Status
(LAC 50:V.5107)

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 \$59,787 for FY 11-12. The impact on state general funds in FY 12-13 and future fiscal years is unknown due to changes in nursing facility occupancy. To the extent that nursing facility occupancy increases, the savings reflected in FY 11-12 could decrease. It is anticipated that \$410 (\$205 SGF and \$205 FED) will be expended in FY 10-11 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 \$135,213 for FY 11-12. The impact on revenue collections in FY 12-13 and future fiscal years is unknown due to changes in nursing facility occupancy. To the extent that nursing facility occupancy increases and results in an increase in expenditures, the revenue collections reflected in FY 11-12 could increase. It

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt LAC 50:V.5107 in the Medical Assistance Program as authorized by 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, Bureau of Health Services Financing has had a long standing policy governing the time span when services rendered in an outpatient hospital setting would be deemed as inpatient services. Currently, outpatient services that exceed a duration of 24 hours are "deemed" as inpatient services, regardless of whether the recipient is still considered as being in outpatient status. The department now proposes to amend the provisions governing outpatient hospital services in order to adopt provisions governing the duration of outpatient status for the purpose of Medicaid coverage and reimbursement.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospitals

Subpart 5. Outpatient Hospitals

Chapter 51. General Provisions

§5107. Duration of Outpatient Status

A. The Medicaid Program will reimburse medically necessary services rendered to a recipient in outpatient status up to a time period not to exceed 30 hours.

B. This time period is used by the physician to observe the recipient and to determine the need for the following actions:

1. further treatment;
2. admission to inpatient status; or
3. discharge.

C. It is the responsibility of the physicians providing the recipient's outpatient hospital care to determine whether he/she should be admitted to 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:

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 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 Thursday, April 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
Duration of Outpatient Status**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that the implementation of this proposed rule will have no state general fund programmatic fiscal impact to the state other than the cost of promulgation for FY 10-11. It is anticipated that \$246 (\$123 SGF and \$123 FED) will be

expended in FY 10-11 for the state's administrative expense for promulgation of this proposed rule and the final rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will not affect federal revenue collections other than the federal share of the promulgation costs for FY 10-11. It is anticipated that \$123 will be collected in FY 10-11 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 outpatient hospital services in order to adopt provisions which will extend the duration of outpatient hospital status for the purpose of Medicaid coverage and reimbursement. It is anticipated that implementation of this proposed rule will reduce expenditures in the Hospital Services Program by not automatically paying an inpatient per diem rate [which is typically more costly than the average outpatient claim] when a patient exceeds 24 hours in the hospital which is the current policy. This proposed Rule extends the duration of outpatient status to 30 hours which will likely reduce costs by an unknown amount since outpatient claims are paid a cost to charge ratio and undergo a cost settlement process. However, the current claims system does not capture the data in a manner that can determine which claims will be subject to the new provisions. Therefore, the programmatic fiscal impact of this proposed rule is indeterminable.

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
1103#112

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Prosthetics and Orthotics
Osteogenic Bone Growth Stimulators
(LAC 50:XVII.10501-10505)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt LAC 50:XV.10501-10505 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 re-promulgated all of the provisions governing prosthetic and orthotic devices in a codified format for inclusion in the *Louisiana Administrative Code (LAC)* (*Louisiana Register*, Volume 30, Number 5). The department subsequently repealed and replaced the provisions of the May 20, 2004 Rule in order to establish the provisions governing prosthetic and orthotic devices in LAC 50:XVII (*Louisiana Register*, Volume 31, Number 7). The provisions governing osteogenic bone growth stimulators were inadvertently omitted from the July 20, 2005 Rule.

The Department of Health and Hospitals, Bureau of Health Services Financing now proposes to amend the provisions governing prosthetic and orthotic devices in order to incorporate the provisions governing osteogenic bone growth stimulators.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XVII. Prosthetics and Orthotics

Subpart 5. Orthotic Devices Chapter 105. Osteogenic Bone Growth Stimulators

§10501. General Provisions

A. Osteogenic bone growth stimulators are used to augment bone repair associated with either a healing fracture or bone fusion.

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:

§10503. Medical Necessity

A. Spinal noninvasive electrical bone growth stimulators may be considered:

1. when a minimum of nine months has elapsed since the patient has had fusion surgery which has resulted in a failed spinal fusion;

2. when there is a history of a previously failed spinal fusion at the same site following spinal fusion surgery and more than nine months has elapsed since fusion surgery was performed at the same level which is being fused again. As long as nine months has passed since the failed fusion surgery, this repeated fusion attempt requires no minimum passage of time for the application of the device; or

3. following a multi-level spinal fusion (i.e., involving three or more contiguous vertebrae, such as L3-L5 or L4-S1). There is no minimum time for application after this surgery.

B. Nonspinal noninvasive ultrasonic bone growth stimulators may be considered for nonunion fractures when a minimum of two sets of radiographs, one before treatment and a second separated by 90 days, are obtained. These radiographs shall include multiple views and be accompanied by a written interpretation by a physician stating that there has been no clinically significant evidence of fracture healing between the two sets of radiographs.

C. Nonspinal noninvasive electrical bone growth stimulators may be considered:

1. when long bone fractures have failed to heal and a period of six months from the initial date of treatment has elapsed;

2. when a long bone fusion has failed and a period of nine months from the initial date of treatment has elapsed; or

3. for the treatment of congenital pseudoarthroses. There is no minimal time requirement after this diagnosis.

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:

§10505. Reimbursement Methodology

A. Medicaid coverage shall be limited to reimbursement for noninvasive types of bone growth stimulators only. Medicaid will not provide reimbursement for invasive types of bone growth stimulators.

B. Noninvasive types of bone growth stimulators shall be reimbursed on an item-by-item basis. Reimbursement amounts may be based on:

1. invoiced costs to providers;
2. comparative prices of providers;
3. manufacturer's suggested retail prices; or
4. a flat fee negotiated between the department and the 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, 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 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 Thursday, April 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: Prosthetics and Orthotics Osteogenic Bone Growth Stimulators

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that implementation of this proposed rule will have no state general fund programmatic fiscal impact to the state other than the cost of promulgation for FY 10-11. It is anticipated that \$410 (\$205 SGF and \$205 FED) will be expended in FY 10-11 for the state's administrative expense for promulgation of this proposed rule and the final rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will not affect federal revenue collections other than the federal share of the promulgation costs for FY 10-11. It is anticipated that \$205 will be collected in FY 10-11 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 prosthetic and orthotic devices in order to incorporate the current provisions governing osteogenic bone growth stimulators. These provisions were inadvertently omitted when the provisions governing prosthetics and orthotics were repromulgated in July 2005 in a codified format for inclusion in the Louisiana Administrative Code. It is anticipated that implementation of this proposed rule will not have estimable cost or economic benefits for directly affected persons or nongovernmental groups in FY 10-11, FY 11-12, and FY 12-13.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Don Gregory
Medicaid Director
1103#113

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Office of Public Health**

**Added Controlled Dangerous Substances
(LAC 46:LIII.2704)**

The Department of Health and Hospitals, Office of Public Health (DHH/OPH), pursuant to the rulemaking authority granted to the Secretary of DHH by R.S. 40:962(C), proposes to adopt the following Rule for the protection of public health. This Rule is being promulgated in accordance with the Administrative Procedure Act (R.S. 49:950 et seq.).

The Secretary, through DHH/OPH, found it necessary to promulgate an initial Emergency Rule (of the same subject matter contained herein) on January 6, 2011. The initial Emergency Rule is scheduled to terminate 120 days from January 6, 2011 (*i.e.*, on May 5, 2011). A second Emergency Rule of the same subject matter as initial Emergency Rule but having an effective date of May 5, 2011 is being promulgated under the Emergency Rules section of the March 20, 2011 Louisiana Register.

The substance of the proposed Rule herein remains exactly the same as the initial Emergency Rule dated January 6, 2011. However, realizing the important role that pharmacists licensed under the Louisiana Board of Pharmacy provide with respect to the regulation of certain other controlled dangerous substances, the Secretary has chosen to place this proposed Rule into Chapter 27 (Controlled Dangerous Substances) of LAC 46:LIII (Professional and Occupational Standards: Pharmacists).

Based on the criteria and guidance set forth in R.S. 40:962(C) and 40:963, the secretary, under this proposed rulemaking, has determined that the below listed substances have a high potential for abuse and should be listed as controlled dangerous substances. In reaching the decision to designate the below listed substances herein as controlled dangerous substances to Schedule I, the secretary has considered the criteria provided under R.S. 40:963 and the specific factors listed under R.S. 40:962(C). The secretary has determined that Schedule I is the most appropriate due to

his findings that the substances added herein have a high potential for abuse, the substances are not currently accepted as medical use for treatment in the United States, and there is a lack of accepted safety for use of the substances under medical supervision.

**Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part LIII. Pharmacists

Chapter 27. Controlled Dangerous Substances

Subchapter A. General Provisions

§2704. Added Controlled Dangerous Substances

A. The following drugs or substances are added to Schedule I of the Louisiana Uniform Controlled Dangerous Substances Law, R.S. 49:961 et seq.:

1. 3,4-Methylenedioxymethcathinone (Methylone);
2. 3,4-Methylenedioxypropylvalerone (MDPV);
3. 4-Methylmethcathinone (Mephedrone);
4. 4-Methoxymethcathinone;
5. 3-Fluoromethcathinone; and
6. 4-Fluoromethcathinone.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:962 and R.S. 40:963.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:

Family Impact Statement

1. The effect on the stability of the family. The goal of this Rule is to prevent abusers of these substances from harming themselves and others. It is hoped that the regulation of these substances will also reduce or eliminate any associated emergency room/hospital visits, long-term care, and substance-abuse counseling and treatment. Elimination or a reduction of the abuse rate should help the family to remain stable.

2. The effect on the authority and rights of parents regarding the education and supervision of their children. No effect on the authority and rights of parents regarding the education and supervision of their children is anticipated as a result of this proposed rulemaking.

3. The effect on the functioning of the family. Elimination or a reduction of the abuse rate of family members who may be a user of such substances should help the family to function better than it may should the regulation of these substances did not exist.

4. The effect on the family earnings and family budget. It is expected that family members would remain healthier with the adoption of this Rule than if such rule did not exist; therefore, it is anticipated that the family earnings and family budget should be protected from additional, unexpected expenditures since adoption of this Rule will make it more difficult for members of the family to obtain such substances.

5. The effect on the behavior and personal responsibility of children. It is expected that this Rule will enhance the personal responsibility of children by denying minors access to previously legal-to-obtain dangerous substances that have a high rate of abuse as demonstrated by recent hospitalizations and deaths.

6. The ability of the family or local government to perform the function as contained in the proposed Rule. Local law enforcement will assist state and federal authorities in investigation and prosecution of those who violate the Uniform Controlled Substances Law of

Louisiana. This rule will have little direct impact on this existing function.

Public Comments

In addition, all interested persons are invited to submit written comments on the proposed Rule. Such comments must be received no later than Friday, April 29, 2010 at COB, 4:30 p.m., and should be addressed to Lance Broussard, Administrator, Food and Drug Unit, Sanitarian Services Section, Center for Environmental Health Services, Office of Public Health, CEHS Mail Bin #10, P.O. Box 4489, Baton Rouge, LA 70821-4489, or faxed to (225) 342-7672. If comments are to be shipped or hand-delivered, please deliver to the Bienville Building, 628 North Fourth Street, Room 164, Baton Rouge, LA 70802.

Public Hearing

DHH-OPH will conduct a public hearing at 2 p.m. on Thursday, April 28, 2010, in Room 118 of the Bienville Building, 628 North Fourth Street, Baton Rouge, LA. Persons attending the hearing may have their parking ticket validated when one parks in the 7-story Galvez Parking Garage which is located between North Sixth and North Fifth/North and Main Sts. (catercorner and across the street from the Bienville Building). All interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing.

Bruce D. Greenstein
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Added Controlled
Dangerous Substances**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed changes will result in an estimated state cost of \$328 to publish the notice of intent and the final rule in the *Louisiana Register*. This is a one-time cost that is included in the agency's budget. Savings of an unknown amount may be realized by the DHH and other state-run or state financed hospitals/agencies because it is anticipated that there will be fewer cases of individuals seeking medical attention after their exposure to these substances. Law enforcement will be involved in ensuring that these substances are removed from retail stores, etc., and remain off store shelves. It is anticipated that this will be handled with existing staff and resources within the normal scope of operations.

The purpose of the proposed rule is to amend the existing provisions of Chapter 27 (Controlled Dangerous Substances) of LAC 46:LIII (Professional and Occupational Standards: Pharmacists) by adding Section 2704 which is proposed to be titled "Added Controlled Dangerous Substances". This Section has been reserved for the Secretary of DHH to add, by rule (under the authority of R.S. 40:962), controlled dangerous substances which are not already listed under R.S. 40:964.

This amendment will add the six chemical substances that were recently being marketed to the public at retail stores as "bath salts". The substantive part of this rule matches the Emergency Rule issued on January 6, 2011 and published in the January 20, 2011 Louisiana Register.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no impact to the state on revenue collections. However, an estimated effect on revenue collections of local government units cannot be determined as the result of this rule. Local government revenue collections could increase if the Uniform Controlled Dangerous Substances Law is violated as a result of this rule resulting in criminal penalty fees of up to \$50,000 per violation.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Individuals directly affected by the proposed rule are those persons that engage in illegal activities pursuant to possession or manufacture/possession with intent to distribute Schedule I controlled dangerous substances. Such individuals could incur imposition of criminal penalties as outlined in LSA R.S. 40:966. The amount of such costs can vary per individual and therefore is not determinable.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No effect is anticipated on competition and employment as a result of the promulgation of this rules.

Clayton Williams
Assistant Secretary
1103#115

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Public Safety
Office of State Police
Transportation and Environmental Safety Section**

Federal Motor Carrier Regulations
(LAC 33:V.10303)

The Department of Public Safety and Corrections, Office of State Police, in accordance with R.S. 49:950 et seq., and R.S. 32:1501 et seq., gives notice of its intent to amend its rules regulating motor carrier safety and hazardous materials by updating the revision date of the adopted federal motor carrier regulations to January 1, 2011.

Title 33

ENVIRONMENTAL QUALITY

Part V. Hazardous Wastes and Hazardous Materials

Subpart 2. Department of Public Safety and Corrections—Hazardous Materials

Chapter 103. Motor Carrier Safety and Hazardous Materials

§10303. Federal Motor Carrier Safety and Hazardous Materials

A. The following federal motor carrier safety regulations and hazardous materials regulations promulgated by the United States Department of Transportation, revised as of January 1, 2011, and contained in the following Parts of 49 CFR as now in effect or as hereafter amended, are made a part of this Chapter.

Hazardous Material Regulations	
Part 107	Hazardous Materials Program Procedures
Part 171	General Information, Regulations, and Definitions
Part 172	Hazardous Materials Table, Special Provisions, and Hazardous Materials Communications, Emergency Response Information, and Training Requirements

Hazardous Material Regulations	
Part 173	Shippers—General Requirements for Shipments and Packagings
Part 177	Carriage by Public Highways
Part 178	Specifications for Packagings
Part 180	Continuing Qualification and Maintenance of Packagings
Motor Carrier Safety Regulations	
Part 355	Compatibility of State Laws and Regulations Affecting Interstate Motor Carrier Operations
Part 360	Fees for Motor Carrier Registration and Insurance
Part 365	Rules Governing Applications for Operating Authority
Part 367	Standards for Registration with States
Part 373	Receipts and Bills
Part 374	Passenger Carrier Regulations
Part 375	Transportation of Household Goods in Interstate Commerce: Consumer Protection Regulations
Part 376	Lease and Interchange of Vehicles
Part 379	Preservation of Records
Part 382	Controlled Substances and Alcohol Use and Testing
Part 383	Commercial Driver's License Standards; Requirements and Penalties
Part 384	State Compliance with Commercial Driver's License Program
Part 385	Safety Fitness Procedures
Part 386	Rules of Practice for Motor Carrier, Broker, Freight Forwarder and Hazardous Materials Proceedings
Part 387	Minimum Levels of Financial Responsibility for Motor Carriers
Part 388	Cooperative Agreements with States
Part 389	Rulemaking Procedures-Federal Motor Carrier Safety
Part 390	Federal Motor Carrier Safety Regulations; General
Part 391	Qualifications of Drivers
Part 392	Driving of Commercial Motor Vehicles
Part 393	Parts and Accessories Necessary for Safe Operation
Part 395	Hours of Service of Drivers
Part 396	Inspection, Repair, and Maintenance
Part 397	Transportation of Hazardous Materials; Driving and Parking Rules

AUTHORITY NOTE: Promulgated in accordance with R.S. 32: 1501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 14:31 (January 1988), amended LR 17:1115 (November 1991), LR 19:351 (March 1993), LR 20:58 (January 1994), LR 24:956 (May 1998), LR 24:2321 (December 1998), LR 29:711 (May 2003), LR 30:447 (March 2004), LR 32:641 (April 2006), LR 34:882 (May 2008), amended by the Department of Public Safety and Corrections, Office of State Police, Transportation and Environmental Safety Section, LR 37:

Family Impact Statement

1. The effect of this Rule on the stability of the family. This Rule should not have any effect on the stability of the family.

2. The effect of this Rule on the authority and rights of parents regarding the education and supervision of their children. This Rule should not have any effect on the authority and rights of parents regarding the education and supervision of their children.

3. The effect of this Rule on the functioning of the family. This Rule should not have any effect on the functioning of the family.

4. The effect of this Rule on family earnings and family budget. This Rule should not have any effect on family earnings and family budget.

5. The effect of this Rule on the behavior and personal responsibility of children. This Rule should not have any effect on the behavior and personal responsibility of children.

6. The effect of this Rule on the ability of the family or local government to perform the function as contained in the proposed rules. This Rule should not have any effect on the ability of the family or local government to perform the function as contained in the proposed Rule.

Public Comments

Interested persons may submit written comments to Paul Schexnayder, P.O. Box 66614, Baton Rouge, LA 70896. Written comments will be accepted through April 15, 2011.

Jill P. Boudreaux
Undersecretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Federal Motor Carrier Regulations

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There should be no additional costs incurred, nor savings realized, as a result of the adoption of these rules. The proposed rule simply updates the revision date of adopted federal motor carrier regulations.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There should be no effect on revenue collections of state or local governmental units as a result of this rule change

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There should be no costs or economic benefits to any person or group, as a result of this rule change.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule change should not affect competition or employment.

Jill Boudreaux
Undersecretary
1103#057

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Revenue Policy Services Division

Electronic Filing Requirements
for Oil or Gas Severance Tax
(LAC 61:III.1525)

Under the authority of R.S. 47:1511, which authorizes the Secretary of Department of Revenue to prescribe rules and regulations to carry out the purposes of Title 47 of the Louisiana Revised Statutes of 1950 and the purposes of any other statutes or provisions included under the secretary's authority, and, in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to adopt LAC 61:III.1525 to mandate electronic filing of the applications for certification of wells for reduced oil or gas severance tax rates.

The proposed Rule provides information relative to the electronic filing mandate. Specifically, the Rule provides that, beginning with the filing of the July 2011 production month application due September 25, 2011, the secretary of

revenue will require the gas severance tax application for certification of incapable wells, Form G-2, and the oil severance tax application for certification of stripper/incapable wells, Form O-2, to be electronically filed with the Department of Revenue on or before the twenty-fifth day of the second month following the production month in which the reduced tax rate(s) is applicable.

Title 61

REVENUE AND TAXATION

Part III. Administrative Provisions and Miscellaneous Chapter 15. Mandatory Electronic Filing of Tax Returns and Payment

§1525. Severance Tax—Oil or Gas

A. R.S. 47:1520(A)(1)(b) authorizes the secretary of revenue to require electronic filing of tax returns or reports by persons severing oil or gas from the soil or water from the state that are required to file reports under R.S. 47:635(A)(2) or 640(A)(2).

B. R.S. 47:635(A)(2) requires every person severing oil or gas from the soil or water of the state to submit, on or before the twenty-fifth day of the second month following the month to which the tax is applicable, a statement on forms approved by the department, of the business conducted by the severer during the month, showing the gross quantity of oil or gas severed or produced, the names of the owners at the time of severance, the portion owned by each, the location and place(s) where the oil or gas was produced or severed from the soil or water and any other reasonable and necessary information pertaining thereto that the secretary may require.

C. R.S. 47:640(A)(2) requires purchasers and other persons dealing in oil or gas severed from the soil or water in Louisiana to submit, on or before the twenty-fifth day of the second month following the month to which the tax is applicable, to the Department of Revenue a monthly statement on forms approved by the department, showing the names and addresses of all persons from whom they have purchased oil or gas during that month, together with the total quantity of, and gross price paid for the oil or gas, and, at the time the report is made, pay the amount of tax deducted or withheld, or that may be due.

D. Effective with the July 2010 filing period, severers of oil or gas that are required to file reports under R.S. 47:635(A)(2) and 640(A)(2) shall be required to file the tax returns or report electronically with the Department of Revenue using the electronic format prescribed by the department.

E. R.S. 47:633(7)(b) and 633(7)(c)(i)(aa) provide reduced severance tax rates on oil produced from wells that have been certified by the Department of Revenue as “incapable wells” and “stripper wells” on or before the twenty-fifth day of the second month following the month of production.

F. R.S. 47:633(9)(b) and 633(9)(c) provide reduced severance tax rates on gas produced from wells that have been determined by the secretary of revenue to be “incapable oil wells” and “incapable gas wells”.

G. Beginning with the July 2011 production month application that is due September 25, 2011, Form G-2, Application for Certification of Incapable Wells, and Form O-2, Application for Certification of Stripper/Incapable Wells, must be filed electronically with the Department of

Revenue on or before the twenty-fifth day of the second month following the production month in which the reduced tax rate(s) is applicable. If the due date falls on a weekend or holiday, the application and electronic filing thereof is due on the next business day.

H. Failure to comply with these electronic filing requirements will result in the assessment of a penalty of \$100 or five percent of the tax, whichever is greater, as provided by R.S. 47:1520(B).

1. If it is determined that the failure to comply is attributable, not to the negligence of the taxpayer, but to other cause set forth in written form and considered reasonable by the secretary, the secretary may remit or waive payment of the whole or any part of the penalty.

2. If the penalty exceeds \$25,000, it may be waived by the secretary only after approval by the Board of Tax Appeals.

3. If the taxpayer can prove electronic filing of a tax return, report, or application for certification would create an undue hardship, the secretary may exempt the taxpayer from filing the return, report, or application electronically.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511, 47:1520, 47:635(A)(2), 47:640(A)(2), 47:633(7)(b), 47:633(7)(c)(i)(aa), 47:633(9)(b), and 47:633(9)(c).

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 36:1271 (June 2010), amended by the Department of Revenue, Policy Services Division, LR 37:

Family Impact Statement

This proposed amendment to LAC 61:III.1525 should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D).

Small Business Statement

In accordance with R.S. 49:965.6, the Department of Revenue has conducted a Regulatory Flexibility Analysis and found that the proposed amending of this Rule will have negligible impact on small businesses.

Public Comments

Interested persons may submit data, views, or arguments, in writing, to Annie L. Gunn, Attorney, Policy Services Division, P. O. Box 44098, Baton Rouge, LA 70804-4098 or by fax to (225) 219-2759. All comments must be submitted by April 27, 2011.

Public Hearing

A public hearing will be held on April 28, 2011 at 9:00 a.m. in the River Room on the seventh floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA 70802-5428.

Cynthia Bridges
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Electronic Filing Requirements for Oil or Gas Severance Tax

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

This proposed rule requires dealers who remit oil and gas severance taxes to electronically submit applications for certification of stripper or incapable wells to the Louisiana Department of Revenue beginning with the July, 2011,

production month, which are to be filed by September 25, 2011. Electronic filing of these returns is necessary to facilitate proper identification and dedication of oil and gas severance tax revenues. Since applications already exist for the electronic filing of these reports, the department's implementation costs should be minimal and will be absorbed within the department's existing budget allocation. Ongoing system maintenance costs will be offset by a corresponding reduction in printing, postage, and paper processing costs.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This proposed rule, which requires dealers to electronically submit applications for certification of stripper or incapable wells, will have no impact on the revenue collections of state or local governmental units. This proposed rule will help the Department expedite the proper distribution of certain dedicated funds.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The costs for businesses that will be required to electronically file applications for certification of stripper or incapable wells should be negligible since severance taxpayers are already required to file oil and gas severance tax returns electronically. In order to file severance forms electronically, taxpayers are assumed to already own a computer with Internet access, which is also necessary to submit the electronic applications as required by this proposed rule. In addition, regional offices of the Department of Revenue offer kiosks and on-site customer support to assist in electronic filing. The electronic filing of applications for certification should also benefit taxpayers by eliminating paper return preparation and mailing.

The proposed rule also specifies the exact reporting components required by the department. These components are the same as are currently being reported and are not expected to impose a larger burden on the reporting business.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed rule should not affect competition or employment.

Cynthia Bridges
Secretary
1103#010

Gregg V. Albrecht
Chief Economist
Legislative Fiscal Office

NOTICE OF INTENT

**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., notice is hereby given that the Louisiana Professional Engineering and Land Surveying Board has initiated procedures to amend its rules contained in LAC 46:LXI.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:

§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 preferral 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:

§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, 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:

§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:

§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:

§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:

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:

§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:

§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:

§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:

§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:

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:

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:

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:

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:

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 be recognized as standards of practice and that they 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 legal and/or contractual requirements of any boundary survey.

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:

§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:

§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:

§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:

§2909. Route Survey

A. Definition

Route Survey—a survey performed to locate property boundary lines for the purpose of enabling the owner of a proposed pipeline, power line, cable, road or other facilities to acquire a servitude from the property owner.

B. Scope and Product. A route survey shall, as a minimum, consist of the following elements.

1. The professional land surveyor shall be furnished, or shall obtain, all title information needed to define the ownership of the affected tracts of land.

2. The professional land surveyor shall determine, on the ground, the location of all property lines that will be crossed by the proposed facilities. The professional land surveyor shall locate and make survey ties to at least one corner or monument on each property line that is crossed. Installation of new monuments defining the limits of the servitude is not required.

3. The professional land surveyor shall prepare a plat for each tract of land showing the property lines being crossed, the locations of corners or monuments that were recovered, the alignment of the proposed route and the length of the proposed servitude across the tract. These plats shall be prepared in compliance with the requirements for property boundary survey plats that are contained in §2907.

4. If requested by the client, the professional land surveyor shall prepare a legal description for each tract crossed by the proposed servitude. The description shall describe the alignment and length of the proposed servitude and shall comply with the requirements for legal descriptions for property boundary surveys that are contained in §2907.

5. The accuracy standards that are required for route surveys shall be based on the property classification of the tracts being crossed, 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:

§2911. Mineral Unitization Survey

A. Definition

Mineral Unitization Survey—a survey performed to define subsurface mineral boundaries for the specific purpose of allocating mineral rights within a mineral unit. The survey shall properly identify the geologically significant wells which control the unit boundaries and their relationship to the unit boundaries. This 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.

B. Scope and Product. A mineral unitization survey shall, as a minimum, consist of the following elements.

1. The professional land surveyor shall be furnished, or shall obtain, all title information needed to define the ownership of the affected tracts of land, along 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 the property lines of all tracts, or portions of tracts, that will be included in the proposed mineral unit. 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 showing the ownership and limits of the tracts (or portions of tracts) which are included in the proposed mineral unit. These plats shall be prepared in compliance with the requirements for property boundary survey plats that are contained in §2907, in addition to the Louisiana Department of Natural Resources, Office of Conservation's requirements governing unit plats and survey plats (LAC 43:XIX.Chapter 41). These plats shall contain bearings and distance 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.

4. The accuracy standards that are required for mineral unitization surveys shall be based on the property classification of the tracts which are being included in the proposed unit, as presented in §2913. However, if the mineral unitization survey is subject to higher accuracy standards than are required by the state of Louisiana or another regulatory agency, then those higher standards will apply.

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:

§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:

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:

§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:

§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:

Family Impact Statement

In accordance with R.S. 49:953(A)(1)(a)(viii) and 972, the following Family Impact Statement is submitted with the Notice of Intent for publication in the Louisiana Register: The proposed Rule has no known impact on family formation, stability or autonomy.

Public Comments

Interested parties are invited to submit written comments on the proposed Rule through April 10, 2011 at 4:30 p.m., to Donna D. Sentell, Executive Director, Louisiana Professional Engineering and Land Surveying Board, 9643 Brookline Avenue, Suite 121, Baton Rouge, LA 70809-1433.

Donna D. Sentell
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: General Provisions

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There will be no costs or savings to state or local governmental units resulting from these rule changes. The proposed rules incorporate changes stipulated in Act 252 of 2010 and makes technical changes necessary to clarify certain sections. These changes include: job title changes; revisions to the composition and duties of complaint review committees; minimum requirements for licensure of land surveyors; changes to the application deadlines for professional land surveyor licensure; clarification that an applicant must only meet minimum experience qualifications at the time of licensure and not application; clarifies and updates standards of practice for boundary surveys; clarifies that publishing certain books will qualify for continuing education credits; and numerous technical changes throughout the rules to standardize grammar and language.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections of state or local governmental units as a result of this proposed action.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule changes will have a direct benefit to applicants for licensure as a professional engineer or professional land surveyor. Under current rules, an application cannot be made until the applicant meets the minimum experience requirements. Because the application process is lengthy, the applicant may meet the minimum experience requirements several months before receiving licensure. The rule changes permit the applicant to apply prospectively so that licensure occurs on or closer to the date of achieving sufficient work experience to qualify. This change will reduce or eliminate the time between which an applicant meets all minimum qualifications and receives professional licensure.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule changes will have no effect on competition and employment.

Donna D. Sentell
Executive Director
1103#073

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of the Treasury Board of Trustees of the Louisiana State Employees' Retirement System

Election to the Board of Trustees
(LAC 58:I. Chapters 3, 4 and 5)

The Department of the Treasury, Board of Trustees of the Louisiana State Employees' Retirement System ("LASERS") proposes to amend LAC 58:I.Chapters 3 and 5 and adopt Chapter 4 regarding the election of active and retired persons to the LASERS Board of Trustees. The rule changes are proposed to consolidate rule duplication into a single common chapter, to provide clarification where needed, and to update the election process to reflect experience gained in previous elections. These rule changes comply with and are enabled by R.S. 11:515. These rules will completely supplant chapters 3 and 5 and create chapter 4 within Title 58 of the *Louisiana Administrative Code*.

Title 58

RETIREMENT

Part I. Louisiana State Employees' Retirement System Chapter 3. Election of Active Member Trustees

§301. Eligible Candidates

[Formerly LAC 58:I.303.A]

A. An active member candidate for a position on the board of trustees must be an active member of the system with at least 10 years of credited service (excluding any military service credit) as of the date on which nominations close. Optional retirement plan participants do not acquire service credit and are prohibited from running for trustee positions by §307 of this Chapter.

B. A participant in the Deferred Retirement Option Plan who has not yet terminated state service and who is still employed by the state is eligible to run as an active member candidate for election to the board of trustees, so long as he qualifies under subsection A of this section.

C. A rehired retiree who has selected Option 2 of R.S. 11:416 or Option 2 of R.S. 11:416.1 is eligible to run as an active member candidate for election to the board of trustees, so long as he qualifies under Subsection A of this Section.

D. A disability retiree who has returned to work under either R.S. 11:224 or R.S. 11:225 is eligible to run as an active member candidate for election to the board of trustees, so long as he qualifies under subsection A of this section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 23:996 (August 1997), LR 25:1278 (July 1999), LR 26:2633 (November 2000), LR 31:946 (April 2005), LR 34:446 (March 2008), LR 37:

§303. Nomination Process

[Formerly LAC 58:I.303.A]

A. The board of trustees shall accept the name and final four digits of the Social Security number of every candidate nominated by petition of 25 or more active members of the system and shall place the name of such candidates on the ballot, provided each such candidate meets the requirements for trustee. Those active members signing the petition shall also supply the final four digits of their Social Security number. When returning the nominating petition, the candidate should include his qualifications, platform and photograph for inclusion in the election brochure circulated by LASERS. In years where a special election is held, a candidate shall clearly state in his petition whether he is running for a four-year term or for the unexpired portion of the term that is the subject of the special election.

B. The printed name of those persons signing the nominating petition must be legible for purposes of verification. Unverifiable signatories shall not count toward the required total of 25 and may disqualify the petition.

C. In years where a special election is held, a candidate shall clearly state in his petition whether he is running for a four-year term or for the unexpired portion of the term that is the subject of the special election.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 23:996 (August 1997), LR 25:1278 (July 1999), LR 26:2633 (November 2000), LR 31:946 (April 2005), LR 34:446 (March 2008), LR 37:

§305. Vacancies; Special Elections

A. The board shall appoint a member to fill any active member vacancy created on the board. The appointee shall possess the necessary qualifications under R.S. 11:511 for the active member position. The board may give due consideration to the runners-up in the previous election, if those members are willing to serve and the appointment does not violate law or these regulations.

B. The appointment shall be valid only until January 1 of the year following the next election.

C. When the unexpired term for the vacancy is greater than two years, a special election shall be held to fill the vacancy simultaneous with the election ordinarily held in odd number years. The ballot for the special election may be the same as that used in the regular election. Candidates for four year terms may not also be candidates to complete unexpired terms.

D. The deadlines and procedures for special elections shall be identical to those for elections normally held in years ending with odd numbers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511, R.S. 11:512 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 23:997 (August 1997), LR 35:271 (February 2009), LR 37:

§307. Optional Retirement Plan Participants

A. Because optional retirement plan participants do not acquire service credit for purposes of determining eligibility under R.S. 11:511(4), these participants are not eligible to vote in the trustee elections or run for a position on the board of trustees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 26:2633 (November 2000), LR 37:

Chapter 4. Rules Common to the Election of Both Active and Retired Member Trustees

§401. General Schedule of Elections

[Formerly LAC 58:I.301.B and LAC 58:I.501.B]

A. Elections shall be held in years ending with an odd number.

1. Three active member trustees shall be chosen in each election and shall serve a four-year term.

2. Beginning in 1995 and continuing thereafter every four years, two retired member trustees shall be chosen in an election and shall serve a four year term. Beginning in 1997 and continuing thereafter every four years, a single retired trustee shall be chosen in an election and shall serve a four year term.

B. The schedule for elections shall be as follows:

1. first day in March: nominations shall be opened;

2. second Tuesday in July: nominations shall be closed. All nominating petitions must be received by the close of business (4:30 p.m. Central Time);

3. Friday following second Tuesday in July: a drawing shall be held to determine candidate positions on a ballot;

4. fourth Friday in September: the final day that information on candidates and ballots may be mailed;

5. fourth Friday in October: all ballots or electronic votes must be received by the close of business (4:30 p.m. Central Time). No faxed ballots shall be accepted;

6. Wednesday following fourth Friday in October: all ballots and electronic votes shall be tallied and verified;

7. regular November meeting: the board shall be presented with the certified ballot count, and if it is accepted, shall authorize publication of results;

8. January following election: newly elected members receive orientation; oaths shall be taken prior to the regular January meeting.

C. In order to facilitate the election process, in the event of a disaster or emergency declared by executive order or proclamation of the governor, the Executive Director may change the election schedule. Such a schedule change shall be in effect for a single election cycle only, after which the schedule shall return to that set forth in subsection B of this section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 23:996, 997 (August

1997), LR 25:1278 (July 1999), LR 26:2633 (November 2000), LR 33:1151 (June 2007), LR 34:446, 447 (March 2008), LR 37:

§403. Receipt of Nominating Petitions

A. Signed nominating petitions will be accepted if received by facsimile or emailed by the date nominations are closed so long as original nominating petitions are received by 4:30 p.m. Central Time on the first Friday following the close of nominations. If originals are not received by that deadline, the person in whose name they are submitted shall not be qualified as a candidate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 37:

§405. Election Process

[Formerly LAC 58:I.303.C-I and LAC 58:I.503.C-J]

A. Active members—ballots or election brochures shall be distributed to each active member by the fourth Friday in September. This includes active members appearing on the June monthly retirement reports and participants in the DROP program who have not terminated service.

B. Retired members—ballots or election brochures shall be distributed to each retired member appearing on the June Retiree Master List by the fourth Friday in September.

C. There shall be a drawing at 11 a.m. Central Time on the Friday following the second Tuesday in July, in the Retirement Systems Building, 8401 United Plaza Boulevard, Baton Rouge, LA, to determine the position each candidate shall have on the ballot or election brochure. All candidates may attend or send a representative to the drawing.

D. Each active member may vote for three candidates.

E. Each retiree may vote for two candidates during the election when two retiree members are up for election, but may only vote for one candidate during the election where only one retiree member is up for election. If electronic voting methods are utilized, members shall follow the instructions on the election brochure for registering their votes.

F. If electronic voting methods are utilized, members shall follow the instructions on the election brochure for registering their votes. Votes shall be confidential. Ballots or electronic votes received after the close of business on the fourth Friday in October (4:30 p.m. Central Time) shall be rejected. Ballots must be returned to the address set forth in the instructions on the election brochure.

G. All valid ballots shall be tallied on Wednesday following the fourth Friday in October.

H. The executive director shall submit a written report of the election results to the board of trustees no later than the regular November meeting of the board of trustees.

I. Upon receipt of the results of the election, the board of trustees shall timely promulgate the election and notify the successful candidates of their election and the secretary of state, so as to allow the candidates sufficient time to take and file the oath of office with the Secretary of State within the time specified by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 23:996, 997 (August

1997), LR 25:1278 (July 1999), LR 26:1490 (July 2000), LR 26:2633 (November 2000), LR 31:946, 947 (April 2005), LR 34:446, 447 (March 2008), LR 37:

§407. Winning Candidates

[Formerly LAC 58:I.303.B and G, LAC 58:I.501.A and LAC 58:I.503.H]

A.1. Active Members—the three candidates who receive the most votes shall be declared successful candidates and presented to the board.

2. Retired Members—beginning in 1995 and continuing thereafter every four years, the two retired member candidates who receive the most votes shall be declared successful candidates and presented to the board. Beginning in 1997 and continuing thereafter every four years, the retired member candidate who receives the most votes shall be declared the successful candidate and presented to the board.

B. Ties affecting elected positions shall be decided by a coin toss held by the executive director in the presence of the candidates affected or the representative they designate.

C. No department in the executive branch of state government may have more than two trustees serving on the board at the same time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 23:996 (August 1997), LR 25:1278 (July 1999), LR 26:2633 (November 2000), LR 31:946 (April 2005), LR 34:446 (March 2008), LR 37:

§409. Candidates Withdrawing Prior to Election

A. A candidate may withdraw his candidacy at any time. If he withdraws prior to the deadline for voting, all votes cast for him shall not be counted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 37:

§411. No Solicitation

[Formerly LAC 58:I.303.J and LAC 58:I.503.K]

A. Candidates for election to the LASERS board of trustees shall not solicit employees of LASERS to participate in their campaigns, and LASERS' employees cannot participate, or give assistance to any member who is running for election or re-election to the board. Candidates shall not solicit or have contact with any vendor or employee of a vendor who is providing LASERS with products or services related to elections of the LASERS board of trustees. LASERS employees are free to sign nominating petitions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 23:996 (August 1997), LR 25:1278 (July 1999), LR 26:2633 (November 2000), LR 31:946 (April 2005), LR 34:446 (March 2008), LR 37:

Chapter 5. Election of Retired Member Trustees

§501. Eligible Candidates

[Formerly LAC 58:I.503.A]

A. A candidate for a position of retired member trustee on the board of trustees must be a retired member of the system who has been on retired status (not including retired

status under the Deferred Retirement Option Plan) by the date on which nominations close.

B. A rehired retiree who selected either Option 1 or Option 3 of R.S. 11:416 or Option 1, Option 3 or Option 4 of R.S. 11:416.1 is eligible to run as a candidate for a position of retired member trustee on the board of trustees.

C. A participant in the Deferred Retirement Option Plan who has not yet terminated state service and who is still employed by the state is not eligible to run for board election as a retired member candidate.

D. A disability retiree who has returned to work under either R.S. 11:224 or R.S. 11:225 is not eligible to run as a retired member candidate for election to the board of trustees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 23:997 (August 1997), LR 25:1278 (July 1999), LR 26:1490 (July 2000), LR 26:2633 (November 2000), LR 31:947 (April 2005), LR 34:447 (March 2008), LR 37:

§503. Nomination Process

A. The board of trustees shall accept the name and final four digits of the Social Security number of every candidate nominated by petition of 25 or more retired members of the system and shall place the name of such candidates on the ballot, provided each such candidate meets the requirements for trustee. Those retired members signing the petition shall also supply the final four digits of their Social Security number. When returning the nominating petition, the candidate should include his qualifications, platform and photograph for inclusion in the election brochure circulated by LASERS.

B. The printed name of those persons signing the nominating petition must be legible for purposes of verification. Unverifiable signatories shall not count toward the required total of 25 and may disqualify the petition.

C. In years where a special election is held, a candidate shall clearly state in his petition whether he is running for a four-year term or for the unexpired portion of the term that is the subject of the special election.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 23:997 (August 1997), LR 25:1278 (July 1999), LR 26:1490 (July 2000), LR 26:2633 (November 2000), LR 31:947 (April 2005), LR 34:447 (March 2008), LR 37:

§505. Vacancies; Special Elections [Formerly LAC 58:I.507]

A. The Executive Board of the Retired State Employees Association shall appoint a member to fill any retired member vacancy created on the board. The appointee shall possess the necessary qualifications under R.S. 11:511 for the retired member position.

B. The appointment shall be valid only until January 1 of the year following the next election.

C. When the unexpired term for the vacancy is greater than two years, a special election shall be held to fill the vacancy simultaneously with the election ordinarily held in odd number years. The ballot for the special election may be the same as that used in the regular election.

D. The deadlines and procedures for special elections shall be identical to those for elections normally held in years ending with odd numbers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511, R.S. 11:512 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the State Employees' Retirement System, LR 23:998 (August 1997), amended LR 37:

Family Impact Statement

These Rule changes should not have any known or foreseeable impact on any family as defined by R.S. 49:972.D or on family formation, stability and autonomy. Specifically there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform the function as contained in the proposed Rules.

Public Comments

No preamble for these Rule changes has been prepared. Interested persons may submit written comments on the proposed changes until 4:30 p.m. April 22, 2011 to Steve Stark, Board of Trustees for the Louisiana State Employees' Retirement System, P.O. Box 44213, Baton Rouge, LA 70804.

Cindy Rougeou
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Election to the Board of Trustees

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule changes will have no impact on state or local government expenditures other than the nominal cost of publishing the rules in the State Register. The rule changes are proposed to consolidate rules common to the election of both active and retired Trustees, to allow would-be candidates extra time to submit nominating petitions, to allow the Executive Director to change the election schedule in the event of a disaster or emergency, to clarify active versus retired candidate eligibility, to require persons running to fill an unexpired term to clearly indicate this in their nominating petition and to clarify that nominating petition signatories must be verified as LASERS active or retired members.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There shall be no effect on revenue collections of state or local governmental units as a result of the implementation of these rule changes.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Active and retired persons seeking to run for election to the LASERS Board of Trustees would be directly affected by the proposed action. These would-be candidates will have extra time to submit nominating petitions and will be required to clearly indicate in their nominating petition that they are running to fill an unexpired term.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)

No effect on competition or employment in the public or private sectors is anticipated to result from the proposed rule changes.

Bernard E. "Trey" Boudreaux, III
Assistant Director
1103#072

Evan Brasseaux
Staff Director
Legislative Fiscal Officer

NOTICE OF INTENT

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

Deer Management Assistance Program
(LAC 76:V.111 and 119)

The Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission does hereby advertise their intent to amend the regulations for the Deer Management Assistance Program.

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.

**Title 76
WILDLIFE AND FISHERIES**

Part V. Wild Quadrupeds and Wild Birds

Chapter 1. Wild Quadrupeds

**§111. Rules and Regulations for Participation in the
Deer Management Assistance Program**

A. The following rules and regulations shall govern the Deer Management Assistance Program.

1. Application Procedure

a. Application for enrollment of a new cooperator in the Deer Management Assistance Program (DMAP) must be submitted to the Department of Wildlife and Fisheries by August 1. Application for the renewal enrollment of an active cooperator must be submitted to the Department of Wildlife and Fisheries annually by September 1.

b. Applicants will select from 1 of 4 levels of DMAP participation. Level 1 participation is limited to qualifying clubs of 500 acres or more, and will require collection of complete harvest data, including jaw bone removal, weights, antler measurements, and checking females for lactation. Issuance of both antlered and antlerless tags will be mandatory. Level 2 participation is limited to clubs with 500 acres or more and will also require collection of complete harvest data. Antlerless tags only will be issued unless antlered tags are specifically requested and needed to meet harvest objectives. Level 3 participation will be for tracts of 40 acres or larger, and only require recording the total number of male and female deer harvested. Only antlerless tags are available. Licensed deer farmers authorized to hunt deer by Department of Agriculture and Forestry and Department of Wildlife and Fisheries are eligible to participate in this level. Level 4 participation will only require recording the total number of male and female deer harvested and is only available for nuisance deer issues

such as crop or lawn depredation. Only antlerless tags will be issued. There is no acreage minimum for Level 4.

c. Each application for a new cooperator must be accompanied by a legal description of lands to be enrolled and a map of the property. Renewal applications must be accompanied by a legal description and map only if the boundaries of the enrolled property have changed from records on file from the previous hunting season. This information will remain on file in the appropriate ecoregion field office.

d. Fee schedule:

i. Level 1—\$200 + \$50-100, dependent on acreage;

(a). >500 but <1,500 acres, additional \$50;
(b). >1,500 acres but <10,000 acres, additional

\$100;

(c). >10,000 acres but <20,000 acres - \$500;
(d). >20,000 acres but <50,000 acres - \$1,500;
(e). >50,000 acres but <75,000 acres - \$2,500;
(f). >75,000 acres - \$3,750 minimum, to be

negotiated;

ii. Level 2—\$100 + \$50-100, dependent on acreage;

(a). >500 but <1,500 acres, additional \$50;
(b). >1,500 acres but <10,000 acres, additional

\$100;

(c). >10,000 acres but <20,000 acres - \$500;
(d). >20,000 acres but <50,000 acres - \$1,500;
(e). >50,000 acres but <75,000 acres - \$2,500;
(f). >75,000 acres - \$3,750 minimum, to be

negotiated;

iii. Level 3—\$100 + \$50-100, dependent on acreage;

(a). <500 acres, no additional cost;
(b). >500 but <1,500 acres, additional \$50;
(c). >1,500 acres but <10,000 acres, additional

\$100;

(d). >10,000 acres but <20,000 acres - \$500;
(e). >20,000 acres but <50,000 acres - \$1,500;
(f). >50,000 acres but <75,000 acres - \$2,500;
(g). >75,000 acres - \$3,750 minimum, to be

negotiated;

iv. Level 4—no fee.

e. DMAP fees must be paid to the Department of Wildlife and Fisheries Fiscal Section prior to September 15.

f. An agreement must be completed and signed by the official representative of the cooperator and submitted to the appropriate ecoregion field office for approval. This agreement must be completed and signed annually.

g. Boundaries of lands enrolled in DMAP shall be clearly marked and posted with DMAP signs in compliance with R.S. 56:110 and the provisions of R.S. 56:110 are only applicable to property enrolled in DMAP. DMAP signs shall be removed if the land is no longer enrolled in DMAP. Rules and regulations for compliance with R.S. 56:110 are as follows.

i. The color of DMAP signs shall be orange. The words DMAP and Posted shall be printed on the sign in letters no less than four inches in height. Signs may be constructed of any material and minimum size is 11 1/4" x 11 1/4."

ii. Signs will be placed at 1000 foot intervals around the entire boundary of the property and at every entry point onto the property.

h. By enrolling in the DMAP, cooperators agree to allow department personnel access to their lands for management surveys, investigation of violations and other inspections deemed appropriate by the department. The person listed on the DMAP application as the contact person will serve as the liaison between the DMAP cooperator and the department.

i. Each cooperator that enrolls in DMAP is strongly encouraged to provide keys or lock combinations annually to the enforcement division of the Department of Wildlife and Fisheries for access to main entrances of the DMAP property. Provision of keys is voluntary. However, the cooperator's compliance will ensure that DMAP enrolled properties will be properly and regularly patrolled.

j. Large acreage ownerships (>10,000 acres) may further act as cooperators and enroll additional non-contiguous tracts of land deemed sub-cooperators. Sub-cooperators shall be defined by the large acreage ownerships lease agreements. Non-contiguous sub-cooperator lands enrolled by large acreage ownerships will have the legal description and a map included for those parcels enrolled as sub-cooperators. Sub-cooperators shall be subject to the same requirements, rules and regulations as cooperators.

k. Level 1 DMAP cooperators may hunt deer with modern firearms for up to an additional 30 days where sufficient breeding data exists and supports such an extension. The additional days may be allocated prior to, afterwards, or in combination of both, relative to the regular area season.

2. Tags

a. A fixed number of special tags will be provided by the department to each cooperator/sub-cooperator in DMAP to affix to deer taken as specified by the program participation level. These tags shall be used during all seasons. Tags are only authorized on DMAP lands for which the tags were issued.

b. Each hunter must have a tag in his possession while hunting on DMAP land in order to harvest an antlerless deer (or antlered deer if antlered deer tags are issued). The tag shall be attached through the hock in such a manner that it cannot be removed before the deer is transported. The DMAP tag will remain with the deer so long as the deer is kept in the camp or field, is enroute to the domicile of its possessor, or until it has been stored at the domicile of its possessor, or divided at a cold storage facility and has become identifiable as food rather than as wild game. The DMAP number shall be recorded on the possession tag of the deer or any part of the animal when divided and properly tagged.

c. DMAP tagged antlered or antlerless deer harvested on property enrolled in DMAP do not count in the daily or season bag limit.

d. All unused tags shall be returned by March 1 to the ecoregion field office which issued the tags.

3. Records

a. Cooperators/sub-cooperators are responsible for keeping accurate records on forms provided by the department for all deer harvested on lands enrolled in the program. Mandatory information includes tag number, sex

of deer, date of kill, name of person taking the deer, LDWF i.d. number and biological data (age, weight, antler measurements, lactation) as deemed essential by the Department of Wildlife and Fisheries Deer Section. Biological data collection must meet quality standards established by the Deer Section. Documentation of mandatory information shall be kept daily by the cooperator/sub-cooperator. Additional information may be requested depending on management goals of the cooperator/sub-cooperator.

b. Information on deer harvested shall be submitted by March 1 to the ecoregion field office handling the particular cooperator/sub-cooperator.

c. The contact person shall provide this documentation of harvested deer to the Department upon request. Cooperators/sub-cooperators who do not have a field camp will be given 48 hours to provide this requested documentation.

B. Suspension and cancellation of DMAP Cooperators/Sub-Cooperators

1. Failure of the cooperator/sub-cooperator to follow these rules and regulations may result in suspension and cancellation of the program on those lands involved. Failure to make a good faith attempt to follow harvest recommendations may also result in suspension and cancellation of the program.

a. Suspension of cooperator/sub-cooperator from DMAP. Suspension of the cooperator/sub-cooperator from DMAP, including forfeiture of unused tags, will occur immediately for any misuse of tags, failure to tag any antlerless deer, or failure to submit records to the Department for examination in a timely fashion. Suspension of the cooperator/sub-cooperator, including forfeiture of unused tags, may also occur immediately if other DMAP rules or wildlife regulations are violated. Upon suspension of the cooperator/sub-cooperator from DMAP, the contact person may request a Department of Wildlife and Fisheries hearing within 10 working days to appeal said suspension. Cooperation by the DMAP cooperator/sub-cooperator with the investigation of the violation will be taken into account by the department when considering cancellation of the program following a suspension for any of the above listed reasons. The cooperator/sub-cooperator may be allowed to continue with the program on a probational status if, in the judgment of the department, the facts relevant to a suspension do not warrant cancellation.

b. Cancellation of cooperator/sub-cooperator from DMAP. Cancellation of a cooperator/sub-cooperator from DMAP may occur following a guilty plea or conviction for a DMAP rule or regulation violation by any individual or member hunting on the land enrolled in DMAP. The cooperator/sub-cooperator may not be allowed to participate in DMAP for one year following the cancellation for such guilty pleas or conviction. Upon cancellation of the cooperator/sub-cooperator from DMAP, the contact person may request an administrative hearing within 10 working days to appeal said cancellation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 17:204 (February 1991), amended LR 25:1656 (September 1999),

LR 26:2011 (September 2000), LR 30:2496 (November 2004), LR 34:1427 (July 2008), LR 35:1910 (September 2009), LR 37:

§119. Rules and Regulations for Participation in the Landowner Antlerless Deer Tag Program

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:110.1 and R.S. 56:115.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 26:2011 (September 2000), amended LR 27:1935 (November 2001), LR 30:2497 (November 2004), LR 34:1443 (July 2008), repealed 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 relative to the proposed rule until 4:30 p.m., Thursday, May 5, 2011 to Mr. Scott Durham, Wildlife Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA, 70898-9000.

Stephen W. Sagera
Chairman

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Deer Management Assistance Program

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Implementation of the proposed rule amendment will result in an increase in workload for the Department's biologists who administer this program. However, any workload will be absorbed with existing staff and will not impact expenditures.

No costs or savings to local governmental units are anticipated from implementing the proposed changes.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule amendment incorporates the Landowner Antlerless Deer Tag (LADT) Program into the Deer Management Assistance Program (DMAP). It also creates various management harvest objective participation levels with qualifying criteria and establishes a new fee structure. Due to the new proposed fee structure and management levels offered under this new voluntary Deer Management Assistance Program, annual revenue collections of the Conservation Fund are anticipated to increase by \$80,600. Currently there are 906 landowners participating in LADT and DMAP which amounts to over 1.7 million acres.

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)

Applicants participating in this new voluntary Deer Management Assistance Program will benefit by being able to meet their deer management objectives, offer hunters high quality deer, minimize the impact of property damage caused by high deer populations and perhaps offer an extended hunting season if sufficient breeding data exists to support such an extension.

Most applicants currently enrolled in LADT or DMAP will incur a slight increase in cost to participate in this new voluntary program. Cost to participate in this new program range from a high of \$3,750 plus, depending on the number of acres over 75,000, in Level 1 to no cost in Level 4.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There proposed rule change is anticipated to have little or no effect on competition and employment.

Lois Azzarello
Undersecretary
1103#008

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**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 give notice of its intent to 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.

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.

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:

§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:

§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:

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 of the Notice of Intent to Mr. Mike Wood, Director, Inland Fisheries Section, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000 no later than 4:30 p.m., Thursday, May 5, 2011.

Stephen W. Sagraera
Chairman

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Texas Border Waters, Reciprocal Agreement and Black Bass Regulations

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule amendment will be implemented using existing staff and funding levels. No costs or savings to state or local governmental units are anticipated from implementing the proposed changes.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule amendment is anticipated to have no effect on revenue collections of state and local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Recreational fishermen who fish in the Sabine River, Caddo Lake or Toledo Bend Reservoir will directly benefit from having standardized freshwater fish harvest regulations in each of these areas. They will no longer have to worry about different game fish harvest regulations and whether they are fishing in Texas or Louisiana waters, since the freshwater game fish harvest regulations will be the same.

A small number of anglers will be negatively impacted from changes to the minimum length and daily creel limits, since they may be unable to harvest the same size and quantity of freshwater game fish they are currently harvesting. This is particularly true for skilled anglers who consistently harvest the current daily creel bag limits.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule amendment is anticipated to have no effect on competition and employment in the private or public sector.

Lois Azzarello
Undersecretary
1103#009

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Louisiana Workforce Commission
Office of Workforce Development**

Apprenticeship Law (LAC 40:IX.Chapters 1-5)

Notice is hereby given, in accordance with R.S. 49:950 et seq., that the Louisiana Workforce Commission, Office of Workforce Development, pursuant to authority vested in the executive director, by R.S. 23:381 et seq., and in accordance with applicable provisions of the Administrative Procedure Act, proposes to amend LAC 40:IX., Chapters 1-5 of the Apprenticeship Law. The purpose of the Rule is to make changes, corrections and improvements to current regulations so as to be in compliance with the recently revised USDOL regulations 29 CFR Part 29 in order for the Louisiana Workforce Commission, Apprenticeship Division to continue to be officially recognized by the Office of Apprenticeship, Employment and Training Administration as a state apprenticeship agency. Further, this Rule reflects updates to day-to-day policies and procedures needed to reflect technological advances and economic changes.

Title 40

LABOR AND EMPLOYMENT

Part IX. Apprenticeship

Chapter 1. Apprenticeship Laws

§101. Definitions

Apprentice—a person at least 16 years of age, who has entered into a written apprenticeship agreement with an employer, an association of employers, or an organization of employees, providing for not less than 2,000 hours of reasonable continuous employment and for participation in an approved program of training through employment and through education in related and supplemental subjects. No local ordinance of any political subdivision of the state shall cause any person identified as an apprentice by such political subdivision to be recognized as an apprentice by the Louisiana Workforce Commission, Apprenticeship Division.

Apprenticeship Program/Program Sponsor—a program registered with the Louisiana Workforce Commission, Apprenticeship Division meeting the minimum standards of the state apprenticeship law, which has been approved by both the director of apprenticeship and the State Apprenticeship Council.

Commission—the Louisiana Workforce Commission.

Director—the Director of Apprenticeship for the Louisiana Workforce Commission.

Employer—any person or organization employing an apprentice whether or not the apprentice is enrolled with such person or organization, or with some other person or organization, as an employer.

Executive Director—the executive head and chief administrative officer of the Louisiana Workforce Commission, or any person specifically designated by the executive director.

Louisiana Workforce Commission, Apprenticeship Division—the division within Louisiana state government that is recognized by the Office of Apprenticeship, United States Department of Labor as the official state apprenticeship agency of record for registration of apprenticeship programs for federal purposes.

Sponsor—any person or organization operating a state apprenticeship program, irrespective of whether such person or organization is an employer as a sponsor.

State Apprenticeship Council (SAC)—the Louisiana State Apprenticeship Council, serving as the advisory board to the Louisiana Workforce Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:381-391.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 12:428 (July 1986), amended LR 17:356 (April 1991), amended by the Louisiana Workforce Commission, Office of Workforce Development, LR 37:

§103. Purpose of the Louisiana Apprenticeship System

A. To provide for voluntary apprenticeship under approved apprenticeship agreements and for the execution and approval of such agreements.

B. To open to the people of Louisiana the opportunity to obtain special training which will equip them for profitable employment and a high type of citizenship.

C. To set up as a means to this end a program of voluntary apprenticeship under approved standards of apprenticeship, reviewed by the State Apprenticeship Council and registered with the Louisiana Workforce Commission, Apprenticeship Division, providing facilities for apprenticeship training and guidance in the arts and crafts of industry and trade, with parallel instruction in related and theoretical education.

D. To relate the supply of skilled workers to industry employment demands.

E. To establish standards for apprenticeship training.

F. To provide for a director of apprenticeship with the Louisiana Workforce Commission.

G. To provide for reports to the legislature and the public regarding the status of apprenticeship training in the state.

H. To establish a procedure for the hearing and adjustment of apprenticeship agreement controversies.

I. To accomplish related ends.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:381-391.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 12:428 (July 1986), amended LR 17:356 (April 1991), amended by the Louisiana Workforce Commission, Office of Workforce Development, LR 37:

§105. State Apprenticeship Council

A. The Executive Director of the Louisiana Workforce Commission shall appoint a State Apprenticeship Council as follows:

1. three representatives of employers who have been selected from recommendations made by employer organizations that are party to a registered apprenticeship program, and three representatives of labor organizations who are nominated by state labor federations, who are also party to a Louisiana-approved apprenticeship program;

2. two members representing the general public;

3. the state official in charge of trade and industrial education with the Louisiana Community and Technical College System shall serve in an ex-officio capacity;

4. each member shall be appointed for three years;

5. any member appointed to fill a vacancy occurring prior to the expiration of the term of their predecessor shall be appointed for the remainder of said term;

6. each member of the council not otherwise compensated by public funds, may be reimbursed for transportation and shall be paid not more than \$35 per day for each day spent in attendance at meetings of the apprenticeship council, which shall meet at the call of the director of apprenticeship; and

7. in order to be considered for appointment to the council, members must be party to a registered apprenticeship program and well versed in the apprenticeship system and apprenticeable occupations, or have previously served on the council for ten or more years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:381-391.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 12:428 (July 1986), amended LR 17:356 (April 1991), amended by the Louisiana Workforce Commission, Office of Workforce Development, LR 37:

§107. Duties and Responsibilities of the State Apprenticeship Council

A. The State Apprenticeship Council shall:

1. aid in formulating policies for the effective administration of the State Apprenticeship System;

2. establish standards which shall represent the minimum standards required for approval of apprenticeship program standards for any proposed apprenticeship program sponsor making application for registration of a program;

3. recommend such rules and regulations as may be necessary to carry out the purpose and intent thereof;

4. perform such other functions as the executive director may direct;

5. assure an opportunity for Louisiana citizens to obtain training that will equip them for profitable employment and promote employment opportunities for them under conditions providing adequate training and reasonable earnings as stated in section 381 of the Louisiana Apprenticeship Law;

6. when the State Apprenticeship Council determines that there is reasonable cause to believe that an apprenticeship program is not operating in accordance with these rules and the Louisiana Apprenticeship Law, and voluntary corrective action has not been taken by the program sponsor, the State Apprenticeship Council shall recommend that the director of apprenticeship institute proceedings to deregister the apprenticeship program and shall request the director to make a final decision on the basis of available evidence;

7. upon receipt of proposed standards by the Louisiana Workforce Commission, Apprenticeship Division of new programs or previously approved programs, such standards shall be submitted to the State Apprenticeship Council for its review and recommendation to the director of apprenticeship, who will issue the final decision regarding approval or disapproval thereof. When an apprenticeship program has been deregistered for cause or voluntarily

deregistered in accordance with the provisions set forth in §309 of this Chapter and Title 29 CFR 29.8 and 29.10, they shall not be granted another program for at least one year from the date of deregistration. A compliance review is to be conducted and the program must be in compliance with these rules, standards and the Louisiana plan for EEO.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:381-391.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 12:428 (July 1986), amended LR 17:356 (April 1991), amended by the Louisiana Workforce Commission, Office of Workforce Development, LR 37:

§109. Powers and Duties of the Director of Apprenticeship

A. The Director of Apprenticeship, under the supervision of the Executive Director of the Louisiana Workforce Commission, and with the advice and guidance of the state apprenticeship council, is authorized to administer the provisions of the Louisiana Apprenticeship Law (R.S. 23:381 et seq.). The director of apprenticeship shall perform the following functions:

1. in cooperation with the state apprenticeship council, set up conditions and training standards for apprenticeship agreements, which shall in no case be lower than those prescribed by the Louisiana Apprenticeship Law;
2. act as secretary of the state apprenticeship council;
3. approve any apprenticeship agreement which meets the standards established for an apprenticeship program properly registered with the Louisiana Workforce Commission, Apprenticeship Division;
4. terminate or cancel any apprenticeship agreement in accordance with the provisions of such agreement or the minimum standards for that approved program;
5. keep a record of apprenticeship agreements and their disposition;
6. issue certificates of completion of apprenticeship;
7. evaluate performance of registered apprenticeship programs using tools and factors that include, but are not limited to quality assurance assessments, Equal Employment Opportunity (EEO) reviews and program completion rates;
8. perform such other duties as are necessary to carry out the terms and conditions provided in the State Apprenticeship Standards; and
9. when it is the opinion of the director of apprenticeship, or in the opinion of the State Apprenticeship Council it is needed, the director of apprenticeship may request survey information to justify journeyworker wages being paid by employers. This information shall include employer's name, address and telephone number, journeyworker wage and any other information the director of apprenticeship feels is needed. Failure to submit all of such information as requested shall constitute a violation of these rules and shall subject the apprenticeship program sponsor to deregistration of its apprenticeship program;
 - a. a complete list of affiliated employers shall be updated and submitted to the director of apprenticeship on an annual basis for such purposes;
10. provide technical assistance to employers who strive to sponsor a registered apprenticeship program with the development of their proposed apprenticeship standards; review proposed standards for adherence to state and federal requirements; issue preliminary approval of new programs,

pending concurrence by the State Apprenticeship Council; issue one year provisional registration of new programs and certificate of full registration pending that said program is found in compliance of its standards of apprenticeship after the first year of operation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:381-391.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 12:428 (July 1986), amended LR 17:356 (April 1991), amended by the Louisiana Workforce Commission, Office of Workforce Development, LR 37:

Chapter 3. Apprenticeship Division Standards and Procedure

§301. Standards of Apprenticeship

A. An apprenticeship program, to be eligible for registration/approval by the Louisiana Workforce Commission, Apprenticeship Division shall conform to the following standards.

1. All apprenticeship programs proposed for adoption shall be required to submit standards of apprenticeship on forms supplied by the Apprenticeship Division. All standards of apprenticeship shall first be submitted to the Director of Apprenticeship, who, within 90 days and after careful review, shall make a recommendation to the State Apprenticeship Council for approval if all minimum standards have been met.

a. All other notifications and requests for changes and updates relating to a program sponsor's standards of apprenticeship shall be submitted to the Director of Apprenticeship within 45 days.

2. The program shall have an organized, written plan embodying the terms and conditions of employment, training, and supervision of one or more apprentices in the apprenticeable occupation, as defined in this Part, and subscribed to by a sponsor who has undertaken to carry out the apprentice program and shall contain a statement as to whether or not the apprentice will be compensated for the required school time. The written plan shall also state the names and affiliation of each employer and employee representative and its Joint Apprenticeship Committee.

3. The program standards shall contain the state plan for implementing Title 29 CFR Part 30, Equal Employment Opportunity in Apprenticeship and Training, which plan is made a part of these rules and additional provisions concerning the following:

a. the employment and training of the apprentice in a skilled trade;

b. the term of apprenticeship, which for an individual apprentice may be measured either through the completion of the industry standard for on-the-job learning (at least 2,000 hours) (time-based approach), the attainment of competency (competency-based approach), or a blend of the time-based and competency-based approaches (hybrid approach), as defined in 29 CFR 29.5;

i. the determination of the appropriate approach for the program standards is made by the program sponsor, subject to approval by the registration agency of the determination as appropriate to the apprenticeable occupation for which the program standards are registered;

c. an outline of the work processes in which the apprentice will receive supervised work experience and training on the job, and the allocation of the approximate time to be spent in each major process;

d. provision for organized, related and supplemental instruction in technical subjects related to the trade. A minimum of 144 hours of instruction for each year of the apprenticeship shall be required. This instruction in technical subjects may be accomplished through media such as classroom, occupational or industry courses, electronic media, or other instruction approved by the Workforce Commission, Apprenticeship Division. Also a statement showing where and when the related instruction will be administered shall be contained in the standards;

e. a progressively increasing schedule of wages to be paid the apprentice consistent with the skill acquired. The entry wage shall not be less than the minimum wage prescribed by the Fair Labor Standards Act, where applicable, unless a higher wage is required by other applicable federal law, state law, respective regulations, or by collective bargaining agreements. The journeyworker wage rate upon which the apprentices' wages are to be based shall be set by the program sponsor and approved by the Director of Apprenticeship and State Apprenticeship Council in accordance with the following criteria listed in priority order:

i. the journeyworker wage rate set by the applicable collective bargaining agreement pertinent to an existing registered apprenticeship program in the same area and for the same trade as the proposed apprenticeship program;

ii. the higher of the prevailing wage for the craft for the area as set by the U.S. Department of Labor pursuant to the Davis-Bacon Act and published in the *Federal Register*;

iii. in the event that an apprenticeship program is proposed for a craft in an area where there is no pertinent collective bargaining agreement, Davis-Bacon prevailing wage rate, or local prevailing wage rate, the Apprenticeship Division, based on information gathered by its staff through annual wage surveys, may set a journeyworker wage rate for the specific area and craft, to be incorporated into the proposed standards;

f. periodic review and evaluation of the apprentice's progress in job performance and related instruction; and the maintenance of appropriate progress reports. All programs registered with Louisiana Workforce Commission, Apprenticeship Division shall maintain records on each apprentice in their program as to the hours of employment, work experience and related supplemental instruction;

g. the numeric ratio of apprentices to journeyworkers consistent with proper supervision, training, safety, and continuity of employment, and applicable provisions in collective bargaining agreements, except where such ratios are expressly prohibited by the collective bargaining agreements. The ratio language shall be specific and clear as to application in terms of jobsite, work force, department or plant; and in no instance shall such ratio provide for more than one apprentice for each journeyworker employed per jobsite;

h. a probationary period reasonable in relation to the full apprenticeship term, with full credit given for such period toward completion of apprenticeship, and where the probationary period does not exceed 25 percent of the length of the program, or 1 year, whichever is shorter;

i. adequate and safe equipment and facilities for training, and supervision, and safety training for apprentices on the job and in related instruction;

j. the minimum qualifications required by a sponsor for persons entering the apprenticeship program, with an eligible starting age not less than 16 years;

k. the placement of an apprentice under a written apprenticeship agreement as required by the state apprenticeship law and regulations. The agreement shall directly, or by reference, incorporate the standards of the program as part of the agreement;

l. the granting of credit for previously acquired experience, training, or skills for all applicants equally, with commensurate wages for any progression step so granted;

m. transfer of program sponsor's training obligation when the program sponsor is unable to fulfill its obligation under the apprenticeship agreement to another program sponsor, within the same trade, with the written consent of the apprentice and both program sponsors, subject to the approval of the director of apprenticeship;

n. assurance of qualified training personnel and adequate supervision on the job;

o. recognition for successful completion of apprenticeship is evidence by an appropriate certificate of completion;

p. identification of the registration agency;

q. provision for the registration, cancellation and deregistration of the program; and requirement for the prompt submission of any proposed modification or amendment thereto;

r. provision for registration of apprenticeship agreements, modifications, and amendments; notice to the registration office of persons who have successfully completed apprenticeship programs; and notice of cancellations, suspensions and terminations of apprenticeship agreements and causes therefor;

s. authority for the termination of an apprenticeship agreement during the probationary period by either party without stated cause;

t. name and address of the appropriate person authorized by the program sponsor to receive, process and make disposition of complaints; and

u. recording and maintenance of all records concerning apprenticeship as may be required by Louisiana Workforce Commission, Apprenticeship Division and other applicable laws;

v. any trade having been previously approved for training for a particular apprenticeship training program sponsor which has had no activity for a period of two years, may be canceled from the list of approved trades contained in the apprenticeship standards for such program sponsor.

4. Apprenticeship instructors must meet the state Department of Education's requirements for a vocational-technical instructor, or be a subject matter expert, which is an individual, such as a journeyworker, who is recognized within an industry as having expertise in a specific occupation. In order to be considered a subject matter expert in a particular trade, an instructor must hold a registered apprenticeship certificate of completion, or a similar trade specific credential recognized industry-wide, and have training in teaching techniques and adult learning styles, which may occur before or after the apprenticeship

instructor has started to provide the related technical instruction.

B. Reciprocity. The Louisiana Workforce Commission, Apprenticeship Division shall accord reciprocal approval for federal purposes to apprentices, apprenticeship programs and standards that are registered in other states by the Office of Apprenticeship or another state registration agency if such reciprocity is requested by the apprenticeship program sponsor. Program sponsors seeking reciprocal approval must meet the wage and hour provisions and apprentice ratio standards of the reciprocal state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:381-391.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 12:429 (July 1986), amended LR 17:356 (April 1991), amended by the Louisiana Workforce Commission, Office of Workforce Development, LR 37:

§303. Apprenticeship Agreements

A. The Apprenticeship Agreement Form will be supplied by the Director of Apprenticeship to apprenticeship committees and to individual establishments interested in apprenticeship.

B. Pre-Apprentices. For the purposes of apprenticeship, the Louisiana Workforce Commission, Apprenticeship Division will not indenture pre-apprentices. However, if an organization wishes to establish a bona fide pre-apprenticeship training program, it must make written request to the Apprenticeship Division and demonstrate strong linkages between it and a registered apprenticeship program(s) within Louisiana. If appropriate, the director of apprenticeship may issue a letter of recognition.

C. The date of an apprenticeship agreement will be the actual date the apprentice entered employment as an apprentice as agreed to by the employer, the apprentice, and approved by the Louisiana Workforce Commission, Apprenticeship Division.

D. Apprenticeship agreements to be submitted and processed as follows:

1. program sponsor and apprentice both complete and sign the agreement;

2. program sponsor retains original on file and enters apprentice agreement into the Registered Apprenticeship Partners Information Data System (RAPIDS) to submit electronic request for approval by the Director of Apprenticeship within 45 days of the apprentice's first day of employment;

3. a copy for the apprentice shall be provided; and

4. Director of Apprenticeship shall approve or deny, as appropriate, apprentice registration related requests through RAPIDS within 45 days of receipt, and the program sponsor will be notified of any action taken in RAPIDS via email immediately thereafter.

D. Every apprenticeship agreement entered into shall be signed by the contracting parties (apprentice, and the program sponsor or employer), and the signature of a parent or guardian if the apprentice is a minor employer.

E. Where a trade is covered by a city, parish or state license law or ordinance requiring the journeyworker or skilled worker to produce a license to follow the trade, it will be necessary that this provision of the law be observed before an apprentice employed in such establishment can be registered.

F. Every apprenticeship agreement entered into under the provisions of the Louisiana Apprenticeship Law shall contain:

1. the names of the contacting parties;

2. the date of birth of the apprentice;

3. social security number, on a voluntary basis;

4. a statement of the trade or craft in which the apprentice is to be taught, and the time at which the apprenticeship will begin and end;

5. the number of hours to be spent by the apprentice in work on the job in a time-based program; or a description of the skill sets to be attained by completion of a competency-based program, including the on-the-job learning component; or the minimum number of hours to be spent by the apprentice and a description of the skill sets to be attained by completion of hybrid program; and

6. a statement setting forth a schedule of the work processes in the trade or industry divisions in which the apprentice is to be trained and the approximate time to be spent at each process;

7. the number of hours to be spent in related instruction in technical subjects related to the occupation, which shall not be not less than 144 hours per year;

8. a statement of the graduated scale of wages to be paid the apprentice;

9. a statement providing for a period of probation of not more than 25 percent of the term of apprenticeship or one year, whichever is shorter in duration, during which time the apprenticeship agreement may be terminated, without adverse impact on the program sponsor, by the director of apprenticeship at the request, through RAPIDS, by the program sponsor, or in writing by the apprentice, providing that after such probationary period the apprenticeship agreement may be terminated by the director of apprenticeship by mutual agreement of all parties thereto, or canceled by the director of apprenticeship for good and sufficient reason;

10. a provision that all controversies or differences concerning the apprenticeship agreement which cannot be adjusted locally in accordance with R.S. 23:385 shall be submitted to the director or apprenticeship for determination, as provided in R.S. 23:390;

11. a statement providing after the probationary period, the agreement may be:

a. cancelled at the request of the apprentice; or

b. suspended or cancelled by the sponsor, for good cause, with due notice to the apprentice and a reasonable opportunity for corrective action, and with written notice to the apprentice and to the registration agency within 45 days of the final action taken;

12. such additional terms and conditions as may be prescribed or approved by the director, not inconsistent with the provisions of this Chapter and those established by the Office of Apprenticeship, United States Department of Labor;

13. a reference incorporating as part of the agreement the standards of the apprenticeship program as it exists on the date of the agreement and as it may be amended during the period of the agreement; and

14. a statement that the apprentice will be accorded equal opportunity in all phases of apprenticeship

employment and training, without discrimination because of race, color, religion, national origin or sex;

15. any proposed change in the terms of a registered apprenticeship agreement must be submitted to the Apprenticeship Division for approval by the Director of Apprenticeship;

16. wages of the apprentice will vary with the occupation and locality. The agreement shall contain a statement of the graduated scale of wages to be paid the apprentice (and whether or not the required school time shall be compensated). When the graduated wage rate of the apprenticeship is set on a six month basis, in no instance shall the increase each six months be less than 5 percent. When the wage increase is set on a yearly basis, in no instance shall the increase be less than 10 percent each year. Provided, however, that a program that has at least a minimum starting wage rate of 45 percent of the journeyworker hourly wage rate and has reached 75 percent of the journeyworker hourly wage rate in the final period will be acceptable. The starting wage rate of an apprentice shall not be less than 45 percent of the journeyworker hourly wage or less than the applicable state/federal minimum wage. In no case shall the final period of apprenticeship be less than 75 percent of the journeyworker hourly wage in a four-year trade classification.

G. Such additional terms and conditions as may be prescribed or approved by the director, not inconsistent with the provisions of this Chapter and those established by the Office of Apprenticeship, United States Department of Labor in accordance with 29 CFR Part 29/30.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:381-391.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 12:430 (July 1986), amended LR 17:356 (April 1991), amended by the Louisiana Workforce Commission, Office of Workforce Development, LR 37:

§305. Procedure for Approval of Apprenticeship Agreements

A. The Director of Apprenticeship shall approve an apprenticeship agreement within 15 days if:

1. it meets the standards established under the Louisiana Apprenticeship Law and these rules for an apprenticeship program which has been properly registered with the Louisiana Workforce Commission, Apprenticeship Division;

2. the agreement contains all the requisites provided in §303.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:381-391.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 12:431 (July 1986), amended LR 17:356 (April 1991), amended by the Louisiana Workforce Commission, Office of Workforce Development, LR 37:

§307. Procedure for the Cancellation or Termination of Apprenticeship Agreements and Issuance of Interim Credentials and Certificates of Completion

A. The Director of Apprenticeship may terminate or cancel any apprenticeship agreement in accordance with the provisions of that agreement.

B. In the event that an agreement is terminated by mutual consent of all parties thereto, no opportunity for a hearing prior to such termination is required.

C. Prior to the cancellation or termination of an agreement for reasons other than mutual agreement of all parties, the parties to such agreement shall be afforded an opportunity for hearing after reasonable notice. Such notice and hearing shall conform to the requirements of the Administrative Procedure Act, R.S. 49:955.

D. Programs that adopt competency or hybrid structured standards of apprenticeship may request interim credentials for certification of competency attainments made by an apprentice from the Office of Apprenticeship, United States Department of Labor.

E. Upon the satisfactory completion of apprenticeship, the director of apprenticeship shall issue a certificate of completion of apprenticeship showing the trade in which apprenticeship was served, the date of completion and the name of the program sponsor. A completion certificate shall be issued only after the director of apprenticeship has received an electronic request through the Registered Apprenticeship Partners Information Data System (RAPIDS) for such completion certificate, signed by a representative of the pertinent program sponsor, which signature shall certify that the required training and related instruction has been completed, or after the apprentice has furnished to the director of apprenticeship documented evidence which proves that the required training and related instruction has been completed. If there exists extenuating circumstances in which the program sponsor is unable to access RAPIDS, a written request will be accepted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:381-391.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 12:431 (July 1986), amended LR 17:356 (April 1991), amended by the Louisiana Workforce Commission, Office of Workforce Development, LR 37:

§309. Settlement of Controversies or Complaints, Deregistration Proceedings

A. The Director of Apprenticeship is empowered to investigate possible violations of the terms of an apprenticeship agreement and the standards of apprenticeship that govern such agreements. Such investigation may be based upon the complaint of an interested person, reasonable cause, a request from the state apprenticeship council upon a majority vote, or upon the initiative of the director of apprenticeship. The Director of Apprenticeship is further empowered to hold hearings, inquiries and other proceedings necessary to such investigations and determinations. Prior to any determination concerning a possible violation of the terms of an apprenticeship agreement or the governing standards of apprenticeship, the Director of Apprenticeship shall conduct a fact finding.

B. Subsequent to a determination, the Director of Apprenticeship shall make notification to the state apprenticeship council, and file a fact finding including recommended penalties not resulting in deregistration, with the executive director. If no appeal therefrom is filed with the executive director within 10 days after the date thereof, such determination shall become the order of the Director of Apprenticeship.

C. Any person aggrieved by a determination or action of the Director of Apprenticeship may appeal such action to the executive director who shall hold a hearing thereon, after due notice to the interested parties. Such hearing shall

conform to the requirements of the Administrative Procedure Act, R.S. 49:955.

D. Deregistration

1. Deregistration of a program may be effected upon the voluntary action of the sponsor by submitting a request for cancellation in writing to the Director of Apprenticeship, or upon reasonable cause, by the Director of Apprenticeship instituting formal deregistration proceedings in accordance with this Section.

2. Deregistration at the Request of the Sponsor. The director of apprenticeship may cancel the registration of an apprenticeship program by written acknowledgment of such request stating the following:

a. the registration is cancelled at the sponsor's request, and the effective date thereof;

b. that, within 15 days of the date of the acknowledgment, the sponsor will notify all apprentices of such cancellation and the effective date; that such cancellation automatically deprives the apprentice of individual registration; that the deregistration of the program removes the apprentice from coverage for federal purposes which require the Secretary of Labor's approval of an apprenticeship program, and that all apprentices are referred to the Louisiana Workforce Commission, Apprenticeship Division for information about potential transfer to other registered apprenticeship programs.

3. Deregistration upon Reasonable Cause

a. Deregistration proceedings may be undertaken when the apprenticeship program is not conducted, operated, or administered in accordance with the program's registered provisions or with the requirements of this part, including but not limited to: failure to provide on-the-job learning; failure to provide related instruction; failure to pay the apprentice a progressively increasing schedule of wages consistent with the apprentices skills acquired; or persistent and significant failure to perform successfully. Deregistration proceedings for violation of equal opportunity requirements must be processed in accordance with the provisions under 29 CFR Part 30 and Title 40, Chapter 5.

b. For purposes of this Section, persistent and significant failure to perform successfully occurs when a program sponsor consistently fails to register at least one apprentice, shows a pattern of poor quality assessment results over a period of several years, demonstrates an ongoing pattern of very low completion rates over a period of several years, or shows no indication of improvement in the areas identified by the Apprenticeship Division during a review process as requiring corrective action.

c. Where it appears the program is not being operated in accordance with the registered standards or with requirements of this Part, the Apprenticeship Division must notify the program sponsor in writing.

d. The notice sent to the program sponsor's contact person must:

i. be sent by registered or certified mail, with return receipt requested;

ii. state the shortcoming(s) and the remedy required; and

iii. state that a determination of reasonable cause for deregistration will be made unless corrective action is effected within 30 days.

e. Upon request by the sponsor for good cause, the 30-day term may be extended for another 30 days. During the period for corrective action, the Apprenticeship Division shall assist the sponsor in every reasonable way to achieve conformity.

f. If the required correction is not effected within the allotted time, the Apprenticeship Division must send a notice to the sponsor, by registered or certified mail, return receipt requested, stating the following:

i. the notice is sent under this Paragraph;

ii. certain deficiencies were called to the sponsor's attention (enumerating them and the remedial measures requested, with the dates of such occasions and letters), and that the sponsor has failed or refused to effect correction;

iii. based upon the stated deficiencies and failure to remedy them, a determination has been made that there is reasonable cause to deregister the program and the program may be deregistered unless, within 15 days of the receipt of this notice, the sponsor requests a hearing with the applicable Apprenticeship Division; and

iv. if the sponsor does not request a hearing, the entire matter will be submitted to the Administrator, Office of Apprenticeship, for a decision on the record with respect to deregistration.

g. If the sponsor does not request a hearing, the Apprenticeship Division will transmit to the administrator a report containing all pertinent facts and circumstances concerning the non-conformity, including the findings and recommendation for deregistration, and copies of all relevant documents and records. Statements concerning interviews, meetings and conferences will include the time, date, place, and persons present. The administrator will make a final order on the basis of the record presented.

h. If the sponsor requests a hearing, the Apprenticeship Division will follow the grievance procedures outlined in Subsection C of this Section and refer the matter to the executive director.

i. If, based upon the evidence and testimony presented, the executive director upholds the determination of the Director of Apprenticeship, the decision shall be conclusive if no appeal there from is filed within 30 days after the date of the order or decision. The sponsor has the right to further appeal the decision to the Administrator, Office of Apprenticeship. The Apprenticeship Division will transmit to the administrator a report containing all the data listed in Subparagraph D.3.g of this Section, and the administrator will refer the matter to the Office of Administrative Law Judges. An administrative law judge will convene a hearing in accordance with 29 CFR §29.10, and issue a decision as required in 29 CFR §29.10(c).

4. Every order of deregistration must contain a provision that the sponsor must, within 15 days of the effective date of the order, notify all registered apprentices of the deregistration of the program; the effective date thereof; that such cancellation automatically deprives the apprentice of individual registration; that the deregistration removes the apprentice from coverage for state and federal purposes which require the Director of Apprenticeship's approval of an apprenticeship program; and that all apprentices are referred to the Apprenticeship Division for

information about potential transfer to other registered apprenticeship programs.

5. Reinstatement of Program Registration. Any apprenticeship program deregistered under this Section and 29 CFR §29.8 may be reinstated upon presentation of adequate evidence that the apprenticeship program is operating in accordance with this Part. Such evidence must be presented to the Louisiana Workforce Commission, Apprenticeship Division for consideration.

6. No person shall institute any action for the enforcement of any apprenticeship agreement, or for damages for the breach thereof unless all administrative remedies provided in these rules have first been exhausted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:381-391.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 12:431 (July 1986), amended LR 17:356 (April 1991), amended by the Louisiana Workforce Commission, Office of Workforce Development, LR 37:

§311. Civil Penalties

A. Provisions

1. Any person, including but not limited to, any apprenticeship program sponsor or employer of a registered apprentice, shall be subject to a civil penalty of up to five hundred dollars per violation of the provisions of any of the following:

- a. Title 40, Part IX;
- b. approved program standards;
- c. an approved apprenticeship agreement;
- d. any rules or regulations governing apprenticeship adopted pursuant to the authority contained within Title 40, Part IX of the Louisiana Administrative Code.

2. Reasonable litigation expenses may be awarded to the prevailing party of the adjudicatory hearing. *Reasonable litigation expenses* means any expenses, not exceeding \$7,500, reasonably incurred in prosecuting, opposing, or contesting an agency action, including but not limited to attorney fees, stenographer fees, investigative fees and expenses, witness fees and expenses, and administrative costs.

B. Civil penalties may be imposed only by a ruling of the executive director or his designee, in accordance with §309 of this Part.

C. Out of the civil penalties collected for violations, expenses incurred in enforcing any provisions may be paid by the commission.

D. The executive director may institute civil proceedings in the appropriate district court for the principal place of business of the employer to enforce his rulings or seek injunctive relief to restrain and prevent violations of the provisions of this Chapter or of the rules and regulations adopted under the provisions of this Chapter. The court shall award attorney fees and court costs to the prevailing party. In the event judgment is rendered in said court affirming the civil penalties assessed, the court shall also award to the Louisiana Workforce Commission, Apprenticeship Division judicial interest on said penalties from the date of such judgment until paid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:381-391.

HISTORICAL NOTE: Promulgated by the Department of Labor, Louisiana Workforce Commission, Office of Workforce Development, LR 37:

§313. Cooperation with Other Organizations

A. Louisiana Workforce Commission Business and Career Solution Centers shall:

1. assist in the recruiting and placement of apprentices as appropriate; and

2. advise job seekers of the registered apprenticeship opportunities in their region and their minimum entrance requirements.

B. Louisiana Community and Technical College System shall:

1. supply related training to apprentice classes, and shall furnish classrooms, aids, technical equipment, and other such training materials necessary to the proper training of the apprentices;

2. supervise the related training of apprentices;

3. advise youth as to the entrance requirements of apprenticeship training; and

4. advise employers as to the advantages of apprentice training.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:381-391.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 12:432 (July 1986), amended LR 17:356 (April 1991), amended by the Louisiana Workforce Commission, Office of Workforce Development, LR 37:

§315. Limitations

A. In accordance with Act 364 of 1938, Section 391, nothing in this Chapter or in any apprentice agreement approved under this Chapter shall operate to invalidate any apprenticeship provision in any collective agreement between employers and employees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:381-391.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 12:432 (July 1986), amended LR 17:356 (April 1991), amended by the Louisiana Workforce Commission, Office of Workforce Development, LR 37:

§317. Criteria for Apprenticeable Occupations

A. An apprenticeable occupation is a skilled trade which possesses all of the following characteristics.

1. It is customarily learned in a practical way through a structured, systematic program of on-the-job supervised training.

2. It is clearly identified and commonly recognized throughout an industry.

3. It involves manual, mechanical or technical skills and knowledge which require a minimum of 2,000 hours of on-the-job work experience.

4. It requires related instruction to supplement the on-the-job training.

5. It has been approved by the United States Department of Labor as an apprenticeable occupation.

6. In instances when an employer proposes the development of an apprenticeship program for an occupation that is not found on the federal apprenticeable occupations list, the employer shall provide evidence that:

a. the occupation is considered "high demand" according to Louisiana labor market information;

b. the occupation represents an emerging demand industry-wide;

c. the occupation meets all other criteria for an apprenticeable occupation;

d. an application has been submitted to the United States Department of Labor for the occupation to be recognized as apprenticeable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:381-391.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 12:432 (July 1986), amended LR 17:356 (April 1991), amended by the Louisiana Workforce Commission, Office of Workforce Development, LR 37:

Chapter 5. Louisiana State Plan for Equal Opportunity in Apprenticeship

§501. Scope and Purpose

A. This plan sets forth policies and procedures to promote equality of opportunity in apprenticeship programs registered with the Louisiana Workforce Commission – Apprenticeship Division. These policies and procedures apply to the recruitment and selection of apprentices, and to all conditions of employment and training during apprenticeship. The procedures established provide for review of apprenticeship programs, for registering apprenticeship programs, for processing complaints and for deregistering non-complying apprenticeship programs.

B. The purpose of this plan is to promote equality of opportunity in apprenticeship by prohibiting discrimination based on race, color, religion, national origin, or sex in apprenticeship programs, by requiring affirmative action to provide equal opportunity in such apprenticeship programs, and by coordinating this plan with other equal opportunity programs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:381-391.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 12:433 (July 1986), amended LR 17:356 (April 1991), amended by the Louisiana Workforce Commission, Office of Workforce Development, LR 37:

§503. Definitions

Commission—the Louisiana Workforce Commission.

Employer—any person or organization employing an apprentice whether or not the apprentice is enrolled with such person or organization or with some other person or organization as an employer.

Executive Director—the executive head and chief administrative officer of the Louisiana Workforce Commission, or any person specifically designated by the executive director.

Louisiana Workforce Commission, Apprenticeship Division—the division within Louisiana state government that is recognized by the Office of Apprenticeship, United States Department of Labor as the official state apprenticeship agency of record for registration of apprenticeship programs for federal purposes.

Sponsor—any person or organization operating a state apprenticeship program, irrespective of whether such person or organization is an employer as a sponsor.

State Apprenticeship Council (SAC)—the Louisiana State Apprenticeship Council, serving as the advisory board to the Louisiana Workforce Commission.

State Apprenticeship Program—a program registered with the Louisiana Workforce Commission, Apprenticeship Division and meeting the minimum standards of the applicable federal and state apprenticeship laws.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:381-391.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 12:433 (July 1986), amended LR 17:356 (April 1991), amended by the Louisiana Workforce Commission, Office of Workforce Development, LR 37:

§505. Authority

A. Under the authority vested in the Louisiana Workforce Commission, Apprenticeship Division and set out in Louisiana Revised Statutes, 1950, (annotated) as amended, R.S. 23:381 through R.S. 23:391, a policy is hereby formulated for non-discrimination in apprenticeship and training by the Louisiana Workforce Commission, Apprenticeship Division.

B. On May 12, 1978, a revised Title 29 CFR Part 30 was established at the request of the Office of the Secretary of Labor, U.S. Department of Labor. Section 30.15, "State Agencies," of Title 29, Part 30, encourages all state apprenticeship agencies to adopt and implement the standards of the U.S. Department of Labor policy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:381-391.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 12:433 (July 1986), amended LR 17:356 (April 1991), amended by the Louisiana Workforce Commission, Office of Workforce Development, LR 37:

§507. Equal Opportunity Standards

A. Obligation of Sponsor. Each sponsor of an apprenticeship program shall:

1. recruit, select, employ and train apprentices during their term of apprenticeship without discrimination because of race, color, religion, national origin, or sex;

2. uniformly apply rules and regulations concerning apprentices, including but not limited to equality of wages, periodic advancement, promotion, assignment of work, job performance, rotation among all work processes of the trade, imposition of penalties or other disciplinary action, and all other aspects of the apprenticeship program administration by the program sponsor; and

3. take affirmative action to provide equal opportunity in apprenticeship, including adoption of an affirmative action plan as required by this state plan.

B. Equal Opportunity Pledge. Each sponsor of an apprenticeship program shall include in its standards the following equal opportunity pledge:

"The recruitment, selection, employment, and training of apprentices during their apprenticeship, shall be without discrimination because of race, color, religion, national origin, or sex. The sponsor will take affirmative action to provide equal opportunity in apprenticeship and will operate the apprenticeship program as required under Title 29 of Code of Federal Regulations, Part 30, and the Louisiana State Plan."

C. Programs Presently Registered. Each sponsor of a program registered with the council as of the effective date of this Part shall within 90 days of that effective date take the following action:

1. include in the standards of its apprenticeship program the equal opportunity pledge prescribed by §507.B;

2. adopt an affirmative action plan as required by §509; and

3. adopt a selection procedure as required by §511 of this plan. A sponsor adopting a selection method as described under §511.B.2, 3, or 4 shall prepare, and have available for submission upon request copies of its amended standards, affirmative action plans, and selection procedure. A sponsor adopting a selection method as described under

§551.B.5 shall submit to the council copies of its standards, affirmative action plan, and selection procedure in accordance with the requirements of §511.B.5.

D. Sponsors Seeking New Registration. A sponsor of a program seeking new registration with the apprenticeship division shall submit copies of its proposed standards, affirmative action plan, selection procedures, and such other information as may be required. The program shall be registered if such standards, affirmative action plan, and selection procedure meet the requirements of this plan.

E. Programs Subject to the Approved Equal Employment Opportunity Plans. A sponsor shall not be required to adopt an affirmative action plan described under §509 of this plan or a selection procedure described under §511 if it submits to the Apprenticeship Division and State Apprenticeship Council satisfactory evidence that it is in compliance with an equivalent equal employment opportunity program. This program must provide for affirmative action in apprenticeship including goals and timetables for women and minorities and must be approved as meeting the requirements of Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e et seq.) and its implementing regulations published in Title 29 of the Code of Federal Regulations, Chapter, XIV, or Executive Order 11246, as amended and its implementing regulations at Title 41 of the Code of Federal Regulations, Chapter 60 provided, that programs approved, modified, or renewed subsequent to the effective date of this amendment will qualify for this exception only if the goals and timetables for the selection of minority and female apprentices provided for in such programs are equal to or greater than the goals required under this Subsection.

F. Program with Fewer than Five Apprentices. A sponsor of a program in which fewer than five apprentices are indentured shall not be required to adopt an affirmative action plan under §509 of this plan or a selection procedure under §511, provided that such program was not adopted to circumvent the requirements of this Subsection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:381-391.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 12:433 (July 1986), amended LR 17:356 (April 1991), amended by the Louisiana Workforce Commission, Office of Workforce Development, LR 37:

§509. Affirmative Action Plans

A. Adoption of Affirmative Action Plans. A sponsor's commitment to equal opportunity in recruitment, selection, employment, and training of apprentices shall include the adoption of a written affirmative action plan.

B. Definition of Affirmative Action. Affirmative action is not merely passive nondiscrimination. It includes procedures, methods, and programs for the identification, positive recruitment, training, and motivation of present and potential minority and female (minority and nonminority) apprentices, including the establishment of goals and timetables. It is action which will equalize opportunity in apprenticeship so as to allow full utilization of the work potential of minorities and women. The overall result to be sought is equal opportunity in apprenticeship for all individuals participating in or seeking entrance to the nation's labor force.

C. Outreach and Positive Recruitment. An acceptable affirmative action plan must also include adequate provision for outreach and positive recruitment that would reasonably be expected to increase minority and female participation in apprenticeship by expanding the opportunity of minorities and women to become eligible for apprentice selection. The affirmative action plan shall set forth the specific steps the sponsor intends to take in the areas listed below in order to achieve these objectives.

1. Disseminate Information Concerning the Nature of Apprenticeship, Availability of Apprenticeship Opportunities, Source of Apprenticeship Applicants, and the Equal Opportunity Policy of the Sponsor. For programs accepting applications only at specified intervals, such information shall be disseminated at least 30 days in advance of the earliest date for applications at each interval. For programs customarily receiving applications throughout the year, such information shall be regularly disseminated but not less than semi-annually. Such information shall be given to the apprenticeship division, U.S. Department of Labor, local schools, employment service offices, women's centers, outreach programs, and community organizations which can effectively reach minority groups and women, and published in newspapers which are circulated in the minority community and among women, as well as the general areas in which the program sponsor operates.

2. Participate in annual workshops conducted by employment service agencies for the purpose of familiarizing school, employment service, and other appropriate personnel with the apprenticeship system and current opportunities therein.

3. Cooperate with local school boards and vocational education systems to develop programs for preparing students to meet the standards and criteria required to qualify for entry into apprenticeship programs.

4. Provide internal communication of the sponsor's equal opportunity policy in such a manner as to foster understanding, acceptance, and support among the sponsor's various officers, supervisors, employees, and members, and to encourage such persons to take necessary action to aid the sponsor in meeting its obligations under this plan.

5. Engage in programs such as Outreach for the positive recruitment and preparation of potential applicants for apprenticeship; where appropriate and feasible, such programs shall provide for pre-testing experience and training. If no such programs are in existence, the sponsor shall seek to initiate these programs, or, when available, to obtain financial assistance from the U.S. Department of Labor. In initiating and conducting these programs, the sponsor may be required to work with other sponsors and appropriate community organizations. The sponsor also shall initiate programs to prepare women to enter traditionally male programs.

6. Encourage establishment and use of programs of preapprenticeship, preparatory trade training, or other programs designed to afford related work experience or to prepare candidates for apprenticeship. A sponsor shall make appropriate provision in its affirmative action plan to assure that those who complete such programs are afforded full and equal opportunity for admission into the apprenticeship program.

7. Utilize journeypersons to assist in the implementation of the sponsor's affirmative action program.

8. Grant advanced standing or credit on the basis of previously acquired experience, training, skills, or aptitude for all applicants equally.

9. Admit to apprenticeship persons whose age exceeds the maximum age for admission to the program, where such action assists the sponsor in achieving its affirmative action obligations.

10. Take any other action necessary to ensure that recruitment, selection, employment, and training of apprentices during apprenticeship, shall be without discrimination because of race, color, religion, national origin, or sex, such as general publication of apprenticeship opportunities and advantages in advertisements, industry reports, articles, etc.; use of present minority and female apprentices and journeypersons as recruiters; career counseling; periodic auditing of affirmative action programs and activities; and development of reasonable procedures between sponsors and employers of apprentices to ensure that equal employment opportunity is being granted including reporting systems, on-site reviews, briefing sessions, etc.

D. Goals and Timetables

1. A sponsor adopting a selection method under §511.B.2 or 3 of this plan which determines on the basis of the analysis described in §509.E that it has deficiencies in terms of underutilization of minorities and/or women (minority and nonminority) in craft or crafts represented by the program shall include in its affirmative action plan percentage goals and timetables for admission of minorities and/or female (minority and non-minority) applicants into the eligibility pool.

2. A sponsor adopting a selection method under §511.B.4 or 5 which determines on the basis of the analysis described in Subsection E of this Section that it has deficiencies in terms of underutilization of minorities and/or women in craft or crafts represented by the program shall include in its affirmative action plan percentage goals and timetables for selecting minority and female (minority and nonminority) applicants for the apprenticeship program.

E. Underutilization

1. As used in this Paragraph, underutilization refers to a condition in which fewer minorities and/or women (minority and nonminority) are employed in the particular craft or crafts represented by the program than would be reasonably expected in view of an analysis of specific factors in §509.F.1-5 of this plan.

2. When, on the basis of the analysis, the sponsor determines that it has no deficiencies, no goals and timetables need be established. However, where no goals and timetables are established, the affirmative action plan shall include a detailed explanation why no goals and timetables have been established.

3. When the sponsor fails to submit goals and timetables as part of its affirmative action plan or submits goals and timetables which are unacceptable, and the council determines that the sponsor has deficiencies in terms of underutilization of minorities or women (minority and nonminority) within the meaning of this Paragraph, the council shall establish goals and timetables applicable to the sponsor for admission of minority and female (minority and

non-minority) applicants into the eligibility pool or selection of apprentices, as appropriate. The sponsor shall make good faith efforts to attain these goals and timetables in accordance with all requirements of this Paragraph.

F. Analysis to Determine if Deficiencies Exist. This analysis shall be set forth in writing of the affirmative action plan. The sponsor's determination as to whether goals and timetables shall be established, shall be based on an analysis of at least the following factors:

1. the size of the working age minority and female (minority and nonminority) population in the program sponsor's labor market area;

2. the size of the minority and female (minority and non-minority) labor force in the program sponsor's labor market area;

3. the percentage of minority and female (minority and non-minority) participation as apprentices in the particular craft as compared with the percentage of minorities and women in the labor force in the program sponsor's labor market area;

4. the percentage of minority and female (minority and non-minority) participation as journeypersons employed by the employer or employers participating in the program as compared with the percentage of minorities and women (minority and non-minority) in the sponsor's labor market area and the extent to which the sponsor should be expected to correct any deficiencies through the achievement of goals and timetables for the selection of apprentices; and

5. the general availability of minorities and women (minority and non-minority) with present or potential capacity for apprenticeship in the program sponsor's labor market area.

G. Establishment and Attainment of Goals and Timetables. Goals and timetables shall be established on the basis of the sponsor's analyses of its underutilization of minorities and women and its entire affirmative action program. A single goal for minorities and a separate single goal for women is acceptable unless a particular group is employed in a substantially disparate manner in which case separate goals shall be established for such group. Such separate goals would be required, for example, if a specific minority group of women were underutilized even though the sponsor had achieved its standards for women generally. In establishing goals, the sponsor should consider results which could be reasonably expected from its good-faith efforts to make its overall affirmative action program work. Compliance with these requirements shall be determined by whether the sponsor has met its goals within its timetables, or failing that, whether it has made good faith efforts to meet its goals and timetables. Its good faith efforts shall be judged by whether it is following its affirmative action program and attempting to make it work, including evaluation and changes in its program where necessary to obtain maximum effectiveness toward attainment of its goals. However, in order to deal fairly with program sponsors, and with women who are entitled to protection under goals and timetables requirements, during the first 12 months after the effective date of these regulations, the program sponsor would generally be expected to set a goal for women for the entering year class at a rate which is not less than 50 percent of the proportion women represent in the workforce in the program sponsor's labor market area, and set a percentage

goal for women in each class beyond the entering class which is not less than the participation rate of women currently in the preceding class. At the end of the first 12 months after the effective date of these regulations, sponsors are expected to make appropriate adjustments in goal levels. See §515.B.

H. Data and Information. The Director of Apprenticeship shall make available to program sponsors data and information on minority and female (minority and nonminority) labor force characteristics for each standard metropolitan statistical area, and for other special areas as appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:381-391.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 12:433 (July 1986), amended LR 17:356 (April 1991), amended by the Louisiana Workforce Commission, Office of Workforce Development, LR 37:

§511. Selection of Apprentices

A. Obligations of Sponsors. In addition to development of a written affirmative action plan to ensure that minorities have an equal opportunity for selection as apprentices and otherwise ensure prompt achievement of full and equal opportunity in apprenticeship, each sponsor shall further provide in its affirmative action program that selection of apprentices shall be made under one of the methods specified in Paragraphs B.2-5 of this Section.

B. Selection. The requirements set forth in this Paragraph B.1 of this Section shall apply to all the methods specified in Paragraphs B.2-5 of this Section.

1. Creation of Pool of Eligibles. A pool of eligibles shall be created from applicants who meet the qualification of minimum legal working age or from applicants who meet qualification standards in addition to minimum legal age and provided that any additional qualification standards conform with the following requirements.

a. Qualification Standards. Qualification standards, and procedures for determining such qualification standards, shall be stated in detail and shall provide criteria for the specific factors and attributes which are to be considered in evaluating applicants for admission to the pool. The score required under each qualification standard for admission to the pool also shall be specified. All qualification standards, and the score required on any standard for admission to the pool, shall be directly related to job performance, as shown by a significant statistical relationship the score required for admission to the pool, and performance in the apprenticeship program. In demonstrating such relationships, the sponsor shall follow procedures set forth in the Guidelines on Employee Selection Procedures, published at 41 CFR Part 60-3. Qualifications shall be considered as separately required so that failure of an applicant to attain the specified score under a single qualification standard shall disqualify the applicant from admission to the pool.

b. Aptitude Tests. Any qualification standard for admission to the pool consisting of aptitude test scores shall be directly related to job performance, as shown by significant statistical relationships between the score on the aptitude tests required for admission to the pool, and performance in the apprenticeship program. In determining such relationships, the sponsor shall follow the procedures set forth in 41 CFR Part 60-3. The requirements of this Subparagraph also shall be applicable to aptitude tests used

by a program sponsor which are administered by a state employment service agency, a private employment agency, or any other person, agency, or organization engaged in selection or evaluation of personnel. A national test developed and administered by a national joint apprenticeship committee will not be approved by the council unless the test meets the requirements of this Part.

c. Educational Attainments. All educational attainments or achievements as qualifications for admission to the pool shall be directly related to job performance, as shown by a significant statistical relationship between the score required for admission to the pool, and performance, in the apprenticeship program. In demonstrating such relationships, the sponsor shall meet the requirements of 41 CFR Part 60-3. School records or a passing grade on the general education development tests recognized by the state or local public instruction authority shall be evidence of educational achievement. Education requirements shall be applied uniformly to all applicants.

d. Oral Interviews. Oral interviews shall not be used as a qualification standard for admission into an eligibility pool. However, once an applicant is placed in the eligibility pool, and before he or she is selected for apprenticeship from the pool, he or she may be required to submit to an oral interview. Oral interviews shall be limited only to such objective questions as may be required to determine fitness of applicants to enter the apprenticeship program, but shall not include questions relating to qualifications previously determined in gaining entrance to the eligibility pool. When an oral interview is used, each interviewer shall record the questions and the general nature of the applicant's answers, and shall prepare a summary of any conclusions. Each applicant rejected from the pool of eligibles on the basis of an oral interview shall be given a written statement of such rejection, reasons therefore, and appeal rights available to the applicant.

e. Notification of Applicants. All applicants who meet requirements for admission shall be notified and placed in the eligibility pool. The program sponsor shall give each applicant from the applicant pool notice of his or her rejection, including reasons for the rejection, requirements for admission to the pool of eligibles, and appeal rights available to the applicant.

f. Goals and Timetables. The sponsor shall establish, where required by §509.D, percentage goals and timetables for admission of minorities and women (minority and nonminority) into the pool of eligibles in accordance with provisions of §509.D, E, and F.

g. Compliance. A sponsor shall be deemed to be in compliance with its commitment under §511.B.1.f of this plan if it meets its goals or timetables or if it makes a good faith effort to meet these goals and timetables. In the event of failure of the sponsor to meet its goals and timetables, it shall be given an opportunity to demonstrate that it has made every good-faith effort to meet its commitments (refer to §509.F). All the actions of the sponsor shall be reviewed and evaluated in determining whether such good-faith efforts have been made.

2. Selection on Basis of Rank from a Pool of Eligible Applicants. A sponsor may select apprentices from a pool of eligible applicants created in accordance with requirements for §511.B.1 on the basis of rank order of scores of

applicants on one or more qualification standards, where there is a significant statistical relationship between rank order of scores and performance in the apprenticeship program. In demonstrating such relationship, the sponsor shall follow procedures set forth in 41 CFR Part 60-3.

3. Random Selection from Pool of Eligible Applicants

a. Selection. A sponsor may select apprentices from a pool of eligible applicants on a random basis. The method of random selection is subject to approval by the council. Supervision of the random selection process shall be by an impartial person or persons selected by the sponsor, but not associated with the administration of the apprenticeship program. The time and place of the selection, and the number of apprentices to be selected, shall be announced. The place of selection shall be open to all applicants and the public. The names of apprentices drawn by this method shall be posted immediately following selection at the program sponsor's place of business. The sponsor adopting this method of selecting apprentices shall meet the requirements of §511.B.1.a-g of this plan relating to creation of the pool of eligibles, oral interviews, and notification of applicants.

b. Goals and Timetables. The sponsor shall establish, where required by §509.D, percentage goals and timetables for admission of minorities and women (minority and nonminority) into the pool of eligibles in accordance with provisions of §509.D, E and F.

c. Compliance. Determinations as to the sponsor's compliance with its obligations under these regulations shall be in accordance with provisions of §511.B.1.g.

4. Selection from Pool of Current Employees

a. Selection. A sponsor may select apprentices from an eligibility pool of the workers already employed by the program sponsor in a manner prescribed by a collective bargaining agreement where such exists, or by the sponsor's established promotion policy. The sponsor adopting this method of selecting apprentices shall establish goals and timetables for selection of minority and female (minority and nonminority) apprentices, unless the sponsor concludes in accordance with provisions of §509.D, E, and F that it does not have deficiencies in terms of underutilization of minorities and/or women in the apprenticeship of journeyman crafts represented by the program.

b. Compliance. Determinations as to the sponsor's compliance with its obligations under these regulations shall be in accordance with provisions of §511.B.1.g of this plan.

5. Alternative Selection Method. A sponsor may select apprentices by means of any other method, including its present selection method, providing that the sponsor meets the following requirements:

a. Selection Method, Goals, and Timetables. Within 90 days of the effective date of this plan, the sponsor shall submit to the council a detailed statement of the selection method it proposes to use, along with the rest of its written affirmative action program. It should include, when required by §509.D, its percentage goals and timetables for selection of minority and/or female (minority and nonminority) applicants for apprenticeship and its written analysis upon which such goals and timetables, or lack thereof, are based. Establishment of goals and timetables must be in accordance with provisions of §509.D, E and F. The sponsor may not implement any such selection method until the council has approved the selection method as meeting requirements of

§511.B.5.b and has approved the remainder of its affirmative action program including its goals and timetables. If the council fails to act upon the selection method and the affirmative action program within 30 days of its submission, the sponsor may then implement the selection method.

b. Qualification Standards. Apprentices shall be selected on the basis of objective and specific qualification standards. Examples of such standards are fair aptitude tests, school diplomas or equivalent, occupationally essential physical requirements, fair interviews, school grades, and previous work experience. When interviews are used, adequate records shall be kept including a brief summary of each interview and the conclusions on each of the specific factors, e.g., motivation, ambition, and willingness to accept direction, all of which are factors of the total judgment. In applying any such standards, the sponsor shall meet the requirements of 41 CFR Part 60-3.

c. Compliance. Determination of the sponsor's compliance with its obligations under these regulations shall be in accordance with provisions of §511.B.1.g. When a sponsor, despite its good-faith efforts, fails to meet its goals and timetables within a reasonable period of time, the sponsor may be required to make appropriate changes in its affirmative action program to the extent necessary to obtain maximum effectiveness toward attainment of its goals. The sponsor also may be required to develop and adopt an alternative selection method, including a method prescribed by the council, when it is determined that the failure of the sponsor to meet its goals is attributable in substantial part to the selection method. When the sponsor's failure to meet its goals is attributable in substantial part to its use of a qualification standard which has adversely affected opportunities of minority and/or women (minority and nonminority) for apprenticeship, the sponsor may be required to demonstrate that such qualification standard is directly related to job performance, in accordance with provisions of §511.B.1.a.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:381-391.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 12:435 (July 1986), amended LR 17:356 (April 1991), amended by the Louisiana Workforce Commission, Office of Workforce Development, LR 37:

§513. Existing List of Eligibles and Public Notices

A. A sponsor adopting a selection method under §511.B.2 or 3 and a sponsor adopting a selection method under §511.B.5 who determines that there are fewer minorities and/or women (minority and nonminority) on its existing lists of eligibles than would reasonably be expected in view of the analysis described in §509.E shall discard all existing eligibility lists upon adoption of selection methods required by this plan. New eligibility pools shall be established, and lists of eligibility pools be posted at the sponsor's place of business. Sponsors shall establish a reasonable period of not less than two weeks for accepting applications for admission to an apprenticeship program. There shall be at least 30 days of public notice in advance of the earliest date for application for admission to the apprenticeship program (see §509.C on affirmative action with respect to dissemination of information).

B. Applicants who have been placed in a pool of eligibles shall be retained on lists of eligibles subject to selection for a period of two years. Applicants may be

removed from the list at an earlier date by their request or following their failure to respond to an apprentice job opportunity given by certified mail, return receipt requested.

C. Applicants who have been accepted in the program shall be afforded a reasonable period of time in light of customs and practices of the industry for reporting for work. All applicants shall be treated equally in determining such period of time. It shall be the responsibility of the applicant to keep the sponsor informed of his or her current mailing address. A sponsor may restore to the list of eligibles an applicant who has been removed from the list at his request or who has failed to respond to an apprenticeship job opportunity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:381-291.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 12:436 (July 1986), amended LR 17:356 (April 1991), amended by the Louisiana Workforce Commission, Office of Workforce Development, LR 37:

§515. Records

A. Obligations of Sponsors. Each sponsor shall keep adequate records including a summary of qualifications of each applicant; the basis for evaluation and for selection or rejection of each applicant; a record pertaining to interviews of applicants; the original application for each applicant; information relative to the operation of the apprenticeship program, including but not limited to job assignment, promotion, demotion, layoff, or termination, rates of pay, or other forms of compensation or conditions of work and, separately, hours of training provided; and any other records pertinent to a determination of compliance with these regulations, as may be required by the apprenticeship division. The records pertaining to individual applicants, whether selected or rejected, shall be maintained in such a manner as to permit identification of minority and female (minority and nonminority) participants.

B. Affirmative Action Plans. Each sponsor must retain a statement of its affirmative action plan required by §509 for the prompt achievement of full and equal opportunity in apprenticeship, including all data and analysis made pursuant to requirements of §509. Sponsors shall annually review their affirmative action plans and update them when necessary, including the goals and timetables.

C. Qualification Standards. Each sponsor must maintain evidence that its qualification standards have been validated in accordance with requirements set forth in §511.B.

D. Maintenance of Records by Sponsors. All records required by this plan and any other information relevant to compliance with these regulations, shall be maintained for five years, and made available, upon request, to the Louisiana Workforce Commission – Apprenticeship Division, the U.S. Department of Labor, or other authorized persons.

E. Records of the Louisiana Workforce Commission, Apprenticeship Division. The apprenticeship division shall keep adequate records, including registration requirements, approved individual program standards, registration records, deregistration records, program compliance reviews and investigations, individual program ethnic count, total apprenticeship ethnic count, and any other records pertinent to a determination of compliance with this plan as may be required by the U.S. Department of Labor, and shall report

such to the U.S. Department of Labor Office of Apprenticeship, semi-annually.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:381-391.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 12:437 (July 1986), amended LR 17:356 (April 1991), amended by the Louisiana Workforce Commission, Office of Workforce Development, LR 37:

§517. Compliance Reviews

A. Conduct of Compliance Reviews. The council will regularly conduct systematic reviews of apprenticeship programs in order to determine the extent to which sponsors are complying with these regulations. The council also will conduct compliance reviews when circumstances, including receipt of complaints not referred to a private review body pursuant to §521.B.1, so warrant, and take appropriate action regarding programs which are not in compliance with the requirements of this plan. Compliance reviews will consist of comprehensive analysis and evaluation of each aspect of the apprenticeship program, including onsite investigations and audits.

B. Reregistration. A sponsor seeking reregistration shall be subject to a compliance review as described in §517.A as part of the registration process.

C. New Registration. Sponsors seeking new registration shall be subject to a compliance review as described in §517.A by the apprenticeship division as part of the registration process.

D. Voluntary Compliance. When a compliance review indicates that the sponsor is not operating in accordance with this plan, the apprenticeship division shall notify the sponsor in writing of results of the review and make a reasonable effort to secure voluntary compliance on the part of the program sponsor within a reasonable time before undertaking sanctions described under §525. In the case of sponsors seeking new registration, the apprenticeship division will provide appropriate recommendations to the sponsor to enable it to achieve compliance for registration purposes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:381-391.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 12:437 (July 1986), amended LR 17:356 (April 1991), amended by the Louisiana Workforce Commission, Office of Workforce Development, LR 37:

§519. Noncompliance with Federal and State Equal Opportunity Requirements

A. A pattern or practice of noncompliance by a sponsor (or when the sponsor is a joint apprenticeship committee, by one of the parties represented on such committee) with federal or state laws or regulations requiring equal opportunity may be grounds for imposition of sanctions in accordance with §525 if such noncompliance is related to equal employment opportunities of apprentices and/or graduates of such an apprenticeship program under this plan. The sponsor shall take affirmative steps to assist and cooperate with employers and unions in fulfilling their equal employment opportunity obligations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:381-391.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 12:437 (July 1986), amended LR 17:356 (April 1991), amended by the Louisiana Workforce Commission, Office of Workforce Development, LR 37:

§521. Complaint Procedure

A. Filing

1. Any apprentice or applicant for apprenticeship who believes that he or she has been discriminated against on the basis of race, color, religion, national origin, or sex, with regard to apprenticeship, or that equal opportunity standards with respect to his or her selection have not been followed during an apprenticeship program may, by himself/herself, or by an authorized representative, file a complaint with the apprenticeship division, or at the apprentice's or applicant's election with a private review body established pursuant to §521.A.3. The complaint shall be in writing and signed by the complainant. It must include the name, address, and telephone number of the person allegedly discriminated against, the program sponsor involved, and a brief description of the circumstances of the failure to apply the equal opportunity standards provided for in this plan.

2. The complaint must be filed not later than 180 days from the date of the alleged discrimination or specified failure to follow equal opportunity standards. In the case of complaints filed directly with review bodies designated by program sponsors to review such complaint, any referral of such complaint by the complainant to the apprenticeship division must occur within the time limitation stated above or 30 days from the final decision of such review body, whichever is later. The time may be extended by the apprenticeship division for good cause shown.

3. Sponsors are encouraged to establish fair, speedy, and effective procedures for a review body to consider complaints of failure to follow equal opportunity standards. A private review body established by the program sponsor for this purpose should number three or more responsible persons from the community serving in this capacity without compensation. Members of the review body should not be directly associated with administration of an apprenticeship program. Sponsors may join together in establishing a review body to serve the needs of programs within the community.

B. Processing of Complaints

1. When the sponsor has designated a review body for reviewing complaints, and if the Apprenticeship Division determines that such review body will effectively enforce equal opportunity standards, the Apprenticeship Division, upon receiving a complaint, shall refer the complaint to the review body.

2. The Apprenticeship Division shall, within 30 days following referral of a complaint to the review body, obtain reports from a complainant and the review body as to the disposition of the complaint. If the complaint has been satisfactorily adjusted, and there is no other indication of failure to apply equal opportunity standards, the case shall be closed and all parties appropriately informed.

3. When a complaint has not been resolved by the review body within 90 days, or when, despite satisfactory resolution of the particular complaint by the review body, there is evidence that equal opportunity practices of the apprenticeship program are not in accordance with this plan, the apprenticeship division may conduct such compliance review as found necessary and will take all necessary steps to resolve the complaint.

4. Where no review body exists, the apprenticeship division may conduct such compliance review as found

necessary in order to determine all facts of the complaint, and obtain such other information relating to compliance with these regulations as circumstances warrant.

5. Sponsors shall provide written notice of the above complaint procedure to all applicants for apprenticeship and all apprentices.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:381-391.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 12:437 (July 1986), amended LR 17:356 (April 1991), amended by the Louisiana Workforce Commission, Office of Workforce Development, LR 37:

§523. Adjustments in Schedule for Compliance Review or Complaint Processing

A. If, in the judgment of the Apprenticeship Division, a particular situation warrants and requires special processing and either expedited or extended determination, it shall take steps necessary to permit such determination if it finds that no person or party affected by such determination will be prejudiced by such special processing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:381-391.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 12:438 (July 1986), amended LR 17:356 (April 1991), amended by the Louisiana Workforce Commission, Office of Workforce Development, LR 37:

§525. Sanctions

A. When the Apprenticeship Division, as a result of a compliance review or other reason, determines that there is reasonable cause to believe that an apprenticeship program is not operating in accordance with this plan, and voluntary corrective action has not been taken by the program sponsor, the apprenticeship division shall institute proceedings to deregister the program or it shall refer the matter to the U.S. Department of Labor for referral to the Equal Employment Opportunity Commission or the Attorney General with recommendations for institution of a court action by the attorney general under Title VII of the Civil Rights Act of 1964, as amended, or the attorney general for other court action as authorized by law.

B. Deregistration proceedings shall be conducted in accordance with the following procedures.

1. The Apprenticeship Division shall notify the sponsor in writing that a determination of reasonable cause has been made under provisions of §525.A and that the apprenticeship program may be deregistered unless, within 15 days of receipt of the notice, the sponsor requests a hearing. The notification shall specify the facts on which the determination is based.

2. If within 15 days of receipt of the notice provided for in §525.B.1, the sponsor mails a request for hearing, the Executive Director, Louisiana Workforce Commission, Apprenticeship Division, shall convene a hearing in accordance with §525.C.

3. The Executive Director, Louisiana Workforce Commission, Apprenticeship Division, shall make a final decision on the basis of the records, which shall consist of the compliance review file and other evidence presented, and if a hearing was conducted pursuant §525.C, the proposed findings and recommended decision of the hearing officer. The Executive Director, Louisiana Workforce Commission, Apprenticeship Division, may allow the sponsor reasonable time to take voluntary corrective action. If the Executive

Director's decision is that the apprenticeship program is not operating in accordance with this plan, the apprenticeship program shall be deregistered. In each case in which deregistration is ordered, the executive director shall make public notice of the order and shall notify the sponsor and the complainant, if any, and the U.S. Department of Labor. The apprenticeship division shall inform any sponsor whose program has been deregistered that it may appeal such deregistration to the U.S. Department of Labor in accordance with procedure set forth at 29 CFR 30.15.

C. Hearings. Hearing shall be conducted in accordance with the following procedures.

1. Within 10 days of receipt of a request for a hearing, the Executive Director, Louisiana Workforce Commission, Apprenticeship Division, shall designate a hearing officer. The hearing officer shall give reasonable notice of such hearing by certified mail, return receipt requested, to the sponsor. Such notice shall include a reasonable time and place of hearing, a statement of the provisions of this plan pursuant to which the hearing is to be held, and a concise statement of the matters pursuant to which the action forming the basis of the hearing is proposed to be taken.

2. The hearing officer shall regulate the course of the hearing. Hearings shall be informally conducted. Every party shall have the right to counsel and a fair opportunity to present his case, including such cross-examination as may be appropriate in the circumstances. Hearing officers shall make their proposed findings and recommended decisions to the Executive Director upon the basis of the record before them.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:381-391.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor LR 12:438 (July 1986), amended LR 17:356 (April 1991), amended by the Louisiana Workforce Commission, Office of Workforce Development, LR 37:

§527. Reinstatement of Program Registration

A. Any apprenticeship program deregistered pursuant to this plan may be reinstated upon presentation of adequate evidence to the director of apprenticeship and state apprenticeship council, that the apprenticeship program is operating in accordance with this plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:381-391.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 12:438 (July 1986), amended LR 17:356 (April 1991), amended by the Louisiana Workforce Commission, Office of Workforce Development, LR 37:

§529. Intimidatory or Retaliatory Acts

A. Any intimidation, threat, coercion, or retaliation by or with the approval of any sponsor against any person for the purpose of interfering with any right or privilege secured by Title VII of the Civil Rights Act of 1964, as amended, Executive Order 11246, as amended, or because he or she as made a complaint, testified, assisted, or participated in any manner in any investigation proceeding or hearing under this plan, shall be considered noncompliance with the equal opportunity standards of this plan. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this plan, including conduct of any investigation, hearing or judicial proceeding arising there from.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:381-391.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 12:438 (July 1986), amended LR 17:356 (April 1991), amended by the Louisiana Workforce Commission, Office of Workforce Development, LR 37:

§531. Nondiscrimination

A. The commitments contained in the sponsor's affirmative action program are not intended, and shall not be used, to discriminate against any qualified applicant or apprentice on the basis of race, color, religion, national origin, or sex.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:381-391.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 12:438 (July 1986), amended LR 17:356 (April 1991), amended by the Louisiana Workforce Commission, Office of Workforce Development, LR 37:

§533. Exemptions

A. Requests for exemption from these regulations, or any part thereof, shall be made in writing to the Director of Apprenticeship and shall contain a statement of reasons supporting the request. Exemptions may be granted for good cause. The Apprenticeship Division will immediately notify the U.S. Department of Labor of any such exemptions granted affecting a substantial number of employees and reasons therefore.

B. Partial exemptions may be granted from three requirements namely:

1. adoption of an affirmative action plan;
2. adoption of selection procedures; and
3. discard of existing eligibility lists.

C. Sponsors eligible for exemption are those who are subject to an equal employment opportunity program providing for selection of apprentices, and for affirmative action in apprenticeship which has been approved as meeting requirement of Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e et seq.) and its implementing regulations published in Title 29 of the Code of Federal Regulations, Chapter XIV, or Executive Order 11246, as amended, and its implementing regulations at Title 41 of the Code of Federal Regulations, Chapter 60.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:381-391.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 12:438 (July 1986), amended LR 17:356 (April 1991), amended by the Louisiana Workforce Commission, Office of Workforce Development, LR 37:

§535. Severability Clause

A. These rules and each of their provisions are hereby declared to be severable, one from another. If any provision or item of a rule, or the application thereof, is held invalid, such invalidity shall not effect other provisions, items, or applications of the rule which can be given effect without the invalid provision, item or application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:381-391.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 12:439 (July 1986), amended LR 17:356 (April 1991), amended by the Louisiana Workforce Commission, Office of Workforce Development, LR 37:

Family Impact Statement

1. The Effect on the Stability of the Family. The proposed apprenticeship rules for the Office of Workforce Development 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 medical guideline rules for the Office of Workforce Development 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 medical guideline rules for the Office of Workforce Development will have no effect on the functioning of the family.

4. The Effect on Family Earnings and Family Budget. The proposed medical guideline rules for the Office of Workforce Development will have no effect on family earnings and family budget.

5. The Effect on the Behavior and Personal Responsibility of Children. The proposed medical guideline rules for the Office of Workforce Development 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 medical guideline rules for the Office of Workforce Development.

Public Comments

Interested persons may submit written comments to Heather Stefan, Director of Apprenticeship, by the close of business on Tuesday, April 27, 2011, at Post Office 94094, Baton Rouge, LA 70804-9094.

Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, April 28, 2011 at 9:30 a.m. at the Louisiana Workforce Commission, 1001 North Twenty-third Street, Baton Rouge, LA 70802, in the fourth floor auditorium. At that time all interested persons will be afforded an opportunity to submit data, views, arguments, information, or comments concerning the proposed Rule.

Curt Eysink
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Apprenticeship Law

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed changes are procedural in nature and mainly represent an update to current practice and compliance with federal requirements and recommendations. Specifically, program registration and review will occur more quickly and compliance measures are expanded (see Section A). There are minimal anticipated state costs for implementation. The Louisiana Workforce Commission will continue to fund the Apprenticeship Division and its activities through Workforce Investment Act funds, which are included in the agency's current appropriation. There is no impact anticipated to local governmental units since the registered apprenticeship program is implemented strictly on the state level

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no estimated effect on state revenue collections resulting from the proposed rule changes for the apprenticeship program.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are minimal estimated costs or economic benefits to affected parties. Reporting procedures may be altered slightly but compliance is not expected to be materially different than what is required now. Increased flexibility in pathways to certification and reciprocity could allow for an expansion of participation in the program allowing more employers to take advantage of the apprenticeship program.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed changes have minimal estimated effects on competition and employment. However, to the extent that increased participation in the apprenticeship program leads to job opportunities for a larger number of apprentices who otherwise would not be employed, employment could increase.

Heather A. Stefan
Director of Apprenticeship
1103#005

Gregory V. Albrecht
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Louisiana Workforce Commission Office of Workers' Compensation

Hearing Rules
(LAC 40:I.5501-6627)

Notice is hereby given, in accordance with R.S. 49:950 et seq., that the Louisiana Workforce Commission, Office of Workers' Compensation, pursuant to authority vested in the Director of the Office of Workers' Compensation by R.S. 23:1310.1 and in accordance with applicable provisions of the Administrative Procedure Act, proposes to amend rules governing the procedure before the workers' compensation court, LAC 40:I, Subpart 2, Chapters 55 through 66 to provide for the procedural rules for the workers' compensation court. The proposed enactment is set forth in the attached documents.

Title 40

LABOR AND EMPLOYMENT

Part I. Workers' Compensation Administration

Subpart 3. Hearing Rules

Chapter 55. General Provisions

Subchapter A. Definitions

§5501. Purpose; Definitions

A. - B. ...

Judicial District—as referred to in R.S. 1310.4, any of the 10 locations of a workers' compensation district office, i.e. Shreveport, Monroe, Alexandria, Lake Charles, Lafayette, Baton Rouge, Covington, New Orleans, Harahan, Houma, and the parishes each encompass.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:265 (February 1999), amended LR 25:1859 (October 1999), amended by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 37:

Subchapter C. Commencement

§5507. Commencement of a Claim

A. - B. ...

C. Any party aggrieved by the R.S. 23:1203.1(J) determination of the medical director may seek judicial review by filing a "Form LWC-WC-1008" in a workers' compensation district office within 15 days of the date said determination is mailed to the parties. A party filing an appeal under this section must simultaneously notify the other party and the medical director that an appeal of the medical director's decision has been filed. Upon receipt of the appeal, the workers' compensation judge shall immediately set the matter for an expedited hearing to be held not less than 15 days nor more than 30 days after the receipt of the appeal by the office. The workers' compensation judge shall provide notice of the hearing date to the parties at the same time and in the same manner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:265 (February 1999) amended LR 25:1860 (October 1999), LR 33:652 (April 2007), amended by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 37:

§5511. Service

A. Service of process in a workers' compensation claim shall be as provided for in R.S. 23:1310.3(C).

B. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:265 (February 1999) amended LR 25:1860 (October 1999), LR 33:652 (April 2007), amended by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 37:

Subchapter D. Venue

§5515. Proper Venue

A. Proper venue in a workers' compensation claim shall be governed by R.S. 23:1310.4. When a claim has been filed in a district of improper venue, the judge shall, by written order and in the interest of justice, transfer the claim to a district of proper venue.

B. When the claimant or his dependent is not a party to the disputed claim, the petitioner shall have the right to select the venue of necessary hearings by the workers' compensation judge as provided in the Code of Civil Procedure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:265 (February 1999), amended LR 25:1860 (October 1999), LR 33:652 (April 2007), amended by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 37:

Subchapter E. Recusal

§5525. Procedure for Recusal of a Workers' Compensation Judge

A. ...

B. A workers' compensation judge may recuse himself, prior to a judgment being rendered, whether a motion for his recusal has been filed by a party or not, in any cause in which a ground for recusal exists.

C. ...

D. On written application of a workers' compensation judge, the chief judge shall immediately reassign the matter to another workers' compensation judge in either the same workers' compensation district office or another workers' compensation district office.

E. Any party to a workers' compensation claim may file a written motion for recusal of the judge to whom the matter is assigned specifying the grounds for recusal. This motion shall be filed prior to trial or hearing unless the party discovers the facts constituting the ground for recusal thereafter. In such case, the motion shall be filed immediately after the facts are discovered, but in no case after judgment. If a valid ground for recusal is set forth in the motion, the judge shall either recuse himself or refer the matter to the chief judge. Upon receipt of the motion the chief judge shall either try the motion or assign it to another workers' compensation judge for trial. Trial of the motion shall be held in an expedited manner and in no event later than 14 days following filing of the motion.

F. If a valid ground for recusal is not set forth in the motion, the judge shall deny the motion and proceed with the trial of the cause. Any party aggrieved by any denial may file an appeal in accordance with the provisions of R.S. 23:1310.5.

G. Consolidated cases are to be considered as one case within the meaning of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:1860 (October 1999), amended LR 33:652 (April 2007), amended by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 37:

§5529. Recusal on Court's Own Motion

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:266 (February 1999), amended LR 25:1860 (October 1999), LR 33:653 (April 2007), repealed by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 37:

Subchapter F. Power and Authority

§5533. General

A. ...

B. All workers' compensation judges shall be subject to the Code of Judicial Conduct, Civil Service Rules, the Louisiana Code of Governmental Ethics and the Louisiana State Bar Association Code of Professional Conduct.

C. All workers' compensation mediators shall be subject to the Civil Service Rules, the Louisiana Code of Governmental Ethics, and the Louisiana State Bar Association Code of Professional Conduct.

D. A workers' compensation judge or mediator shall not refer any claimant to an attorney for representation in a workers' compensation matter except under the following circumstances:

1. when ordered to appoint an attorney for an unrepresented party by a court of competent jurisdiction;
2. except as provided in §5709.B of these rules; or
3. when the judge has a reasonable belief that the unrepresented party lacks capacity to represent himself.

F. The court shall have available a list of attorneys, compiled by the director, who have indicated a willingness to handle workers' compensation matters.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:266 (February 1999), amended LR 25:1860 (October 1999), LR 33:653 (April 2007), amended by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 37:

Subchapter G. Clerks

§5539. District Clerk; Pleadings Filed; Docket Books

A. - B. ...

C. The manager of the records management division shall be the custodian of all records and documents for that district or offices and no such records, documents, or paper shall be withdrawn.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Labor, Office of Workers' Compensation Administration, LR 25:266 (February 1999), amended LR 25:1861 (October 1999), amended by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 37:

Subchapter H. Bailiffs

§5541. Security

A. ...

B. The bailiff may in his discretion, or as ordered by the judge, inspect any object carried by any person entering the premises. No one shall enter or remain in the premises without submitting to such an inspection if requested to do so.

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:266 (February 1999), amended LR 25:1861 (October 1999), LR 33:653 (April 2007), amended by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 37:

Chapter 57. Actions

Subchapter A. General Provisions

§5701. Prescription; Filing Procedure

A. ...

B. All pleadings filed with the court may be filed by facsimile transmission or electronic transmission (with verified signature) to the assigned facsimile number or electronic address of the district of proper venue. A facsimile or electronic transmission (with verified signature), when filed, has the same force and effect as the original. If the party fails to comply with the requirements of Paragraph C, of this Section, a facsimile filing shall have no force or effect.

C.1. Within five days, exclusive of legal holidays, after the district office or the records management division has received a facsimile transmission, the party filing the document shall forward the following to the district office or records manager:

a. - b. ...

c. a transmission fee of \$5 for the first 10 pages and \$1 for each page thereafter.

2. Repealed.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:267 (February 1999), amended LR 25:1862 (October 1999), LR 33:654 (April 2007), amended by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 37:

§5705. Abandonment

A. A claim may be dismissed without prejudice after contradictory hearing properly noticed by the court on the judge's own motion or on ex parte motion of a party for the following reasons:

1. where no service of process has occurred within 60 days after the Form LWC-WC-1008 has been filed. This provision shall not apply if the claim is awaiting action by the workers' compensation court;

2. where no responsive pleadings have been filed and no default has been entered within 60 days after service of process;

3. ...

4. where a claimant fails to appear for any properly noticed conference or hearing.

5. where an attorney or pro se litigant fails to keep the workers' compensation court apprised of an address change or when a notice is returned to the workers' compensation court for the reason of an incorrect address and no correction is made to the address for a period of 60 days.

B. ...

C. Any order of dismissal shall allow for reinstatement of the action within 30 days for good cause shown.

D. The workers' compensation judge may order the claim dismissed, with prejudice, after a contradictory hearing, when it is shown that more than 90 days has elapsed since a claim was dismissed for any reason listed in Sub-Section A of this Section and no good cause has been shown for reinstatement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:268 (February 1999), amended LR 25:1862 (October 1999), LR 33:654 (April 2007), amended by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 37:

Subchapter B. Settlement

§5709. Joint Petition Settlements

A.1. A lump sum or compromise settlement shall be presented to the presiding judge in a pending disputed claim or to any judge in an undisputed claim for approval on Form LWC-WC-1011 and upon joint petition of the parties.

A.2. - B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:268 (February 1999), amended LR 25:1863 (October 1999), LR 33:654 (April 2007), amended by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 37:

Chapter 58. Pleadings

Subchapter B. Supplemental/Amended Pleadings

§5805. Amendment of Claim and Answer

A. Amendment of a claim and answer shall be governed by Code of Civil Procedure Article 1151, et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Labor, Office of Workers' Compensation Administration, LR 25:268 (February 1999), amended LR 25:1863 (October 1999), amended by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 37:

Subchapter C. Forms

§5809. Forms

A. The Office of Workers' Compensation Administration shall prepare and adopt such forms for use in matters before the Office of Workers' Compensation Administration as it may deem necessary or advisable. Whenever Office of Workers' Compensation Administration forms are prescribed and are applicable, they shall be used. A photo ready copy of any form may be procured upon request to any district office, the office of the director, or from the website, www.laworks.net.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:269 (February 1999), amended LR 25:1863 (October 1999), LR 33:654 (April 2007), amended by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 37:

Subchapter D. Mediation

§5813. Mediation Conference

A. Parties who have a workers' compensation dispute as defined by R.S. 23:1310.3(A) and who desire to engage the services of a Louisiana Workforce Commission, Office of Workers' Compensation Administration mediator, may make a joint written request for a mediation conference to any Office of Workers' Compensation mediator selected by mutual agreement of the parties. The parties shall forward to the selected mediator, along with the written request, a confidential position statement, not to exceed 10 pages, outlining the issues in dispute and the respective position of the parties. Upon receipt of the joint written request, the selected mediator shall schedule a mediation conference and provide notice in the same manner and at the same time to all parties of the date and time of the conference. Notice of any scheduled mediation conference may be given by telephone, but shall be confirmed by United States Mail, facsimile transmission, or electronic transmission. The location of the mediation conference shall be in the assigned district office of the selected mediator.

B. A mediation conference may also be scheduled upon order of a presiding workers' compensation judge in any pending workers' compensation disputed claim (LWC-WC-1008). If the parties select an Office of Workers' Compensation mediator, the court-ordered mediation conference shall be conducted in the district office in which the selected mediator is assigned.

C. On the scheduled date of the mediation conference, each party shall provide a representative to participate in the mediation conference, either in person or via telephone, who has been provided with authority to enter into negotiations in a good faith effort to resolve the issue(s) in dispute. The attorneys for the parties may participate in the mediation conference via telephone only upon mutual consent of the parties. No stenographic report shall be taken at any mediation conference and no witnesses shall be called. All statements made at any mediation conference shall be privileged and shall not be admissible in any subsequent status conference, pretrial conference, hearing, or trial. Any

party to the claim and/or their representative may request a copy of the Form 1008 filed in the claim prior to the scheduled mediation conference. No such request shall be denied by any employee of the Office of Workers' Compensation Administration. If the parties agree, the mediator may schedule additional mediation conferences when deemed appropriate.

D. Nothing in this rule shall prohibit parties from requesting the services of an Office of Workers' Compensation mediator prior to the filing of a disputed claim for compensation (LWC-WC-1008). Said request shall be made by the parties in the same manner as provided for in Subsection A of this Section. However, neither the request nor the participation in a pre-1008 mediation conference shall interrupt the running of prescription.

E. Nothing in this rule shall prohibit the parties from engaging the services of a private mediator to conduct a mediation conference at a location mutually agreeable to the parties. Within five days of the conclusion of said private mediation, the parties shall certify to the court that a private mediation has occurred and the results thereof. Said certification shall be provided by the parties via United States mail, electronic transmission, or facsimile transmission.

F. - G. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers' Compensation Administration, LR 25:1863 (October 1999), LR 33:654 (April 2007), amended by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 37:

§5815. Pretrial Mediation

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 33:655 (April 2007), amended by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 37:

§5817. Conclusion of Mediation Conferences held by an Office of Workers' Compensation Mediator

A. When it becomes apparent during the course of a pre-1008 mediation conference that an agreement on all issues cannot be reached, the Office of Workers' Compensation mediator shall issue a report stating the result of the conference. The report shall be issued to the parties immediately following the conference by facsimile transmission, by electronic transmission or by mail within five days thereof.

B. When it becomes apparent during the course of a post-1008 mediation conference that agreement on all issues cannot be reached, the Office of Workers' Compensation mediator shall issue a report stating the results of the conference. The report shall be issued immediately following the conference to the parties and to the judge where the claim was filed. The report shall be issued in person, by facsimile transmission, by electronic transmission, or by mail within five days thereof.

C. Following a mediation conference, at which agreement is reached on all issues in dispute, a report embodying the agreement shall be issued to the parties in person, by facsimile transmission, by electronic

transmission, or by mail within five days thereof. The mediator shall file the original report with the judge presiding over the district where the claim was filed or in the case of a pre-1008 mediation conference, with the judge presiding over the district situated within the parish of the claimant's domicile. The report may require dismissal of the claim or the filing of an LWC Form 1011 within 30 days.

D. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:269 (February 1999), amended LR 25:1864 (October 1999), LR 33:655 (April 2007), amended by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 37:

§5819. Failure to Attend; Sanctions

A. If any party fails to appear at a mediation conference ordered by the judge or requested by the parties, after proper notice and without just cause, the presiding workers' compensation judge, upon request of a party, may fine the delinquent party an amount not to exceed \$500, which shall be payable to the Office of Workers' Compensation Administrative Fund. In addition, the presiding workers' compensation judge may assess against the party failing to attend, costs and reasonable attorney's fees incurred by any other party in connection with the conference. The penalties provided for in this Section shall be assessed by the presiding workers' compensation judge only after a contradictory hearing which shall be held prior to the hearing on the merits of the dispute.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:1864 (October 1999), amended LR 33:655 (April 2007), amended by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 37:

Chapter 59. Production of Evidence

Subchapter D. Depositions

§5925. Depositions in Advance of Hearing;

Perpetuation of Testimony

A. ...

B. Any party seeking to offer the testimony of a witness at trial by deposition may take a deposition to perpetuate the trial testimony of such witness at any time prior to trial. Such deposition may be offered by any party and shall be admissible upon consent of the parties or as otherwise provided by these rules, the Code of Evidence and the Code of Civil Procedure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Labor, Office of Workers' Compensation Administration, LR 25:273 (February 1999), amended LR 25:1866 (October 1999), amended by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 37:

Chapter 60. Pretrial Procedure

§6001. Scheduling Conferences

A. - E. ...

F. If the parties agree, discovery may be conducted after the date set in the scheduling order for the completion of discovery and the parties shall notify the court.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:1867 (October 1999), amended LR 33:657 (April 2007), amended by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 37:

§6003. Conferences or Hearings by Telephone

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:276 (February 1999), amended LR 25:1868 (October 1999), LR 33:657 (April 2007), repealed by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 37:

§6005. Pretrial Conference

A. - B. ...

C. The pretrial conference will be held by telephone, unless in the judge's discretion, attendance in person at the conference is necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:277 (February 1999), amended LR 25:1868 (October 1999), LR 33:657 (April 2007), amended by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 37:

Chapter 61. Hearings

Subchapter B. Continuance and Stays

§6103. General

A. - C. ...

D.1. If all parties are represented by counsel and the motion is uncontested, the moving party shall certify to the court that he has spoken to opposing counsel, that no opposition exists and that all witnesses have been timely notified of the continuance. Only one uncontested motion must be granted. A new trial date shall be established by mutual agreement of the parties.

2. Subsequent uncontested motions for continuance by represented parties may be granted at the discretion of the workers' compensation judge and when the workers' compensation judge believes it is in the best interest of the parties.

E. If any of the parties are unrepresented, the uncontested motion may be granted if there are good grounds therefore and if the workers' compensation judge believes it is in the best interest of the parties.

F. The request for continuance shall state the reasons the continuance is necessary, that all parties have been notified of the request, and whether all parties agree to the continuance.

G. Joint requests for continuance of a pre-1008 or post-1008 mediation conference held by an Office of Workers' Compensation mediator shall be submitted to the selected mediator in writing.

H. Joint requests for continuance of a court-ordered mediation conference may be permitted for good cause shown by written motion to the judge where the claim was filed no later than three business days prior to the scheduled conference. The request shall state the reasons why the continuance is necessary, that all parties have been notified of the request and that all parties agree to the continuance.

I. Contradictory motions for continuance of a court-ordered mediation conference shall be submitted by written motion to the judge where the claim was filed no later than

five business days prior to the scheduled mediation. The judge may entertain such motion by telephone status conference with all parties participating. Such telephone status conference shall be initiated by the party requesting the continuance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:277 (February 1999), amended LR 25:1868 (October 1999), LR 33:658 (April 2007), amended by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 37:

§6104. Stays

A. Upon motion of a party and for good cause shown, or at the discretion of the court in the interest of justice, the workers' compensation judge may order a stay of the claim.

B. When a stay is granted, a telephone status conference shall be set at such intervals as directed by the workers' compensation judge but at least every six months.

C. Section 5705.A of these rules shall not apply to any matter subject to a stay order as long as such order is in effect.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers' Compensation Administration, LR 37:

Chapter 65. Special Disputes

Subchapter B. Social Security Offset

§6507. Offset

A. ...

B. A request for offsets pursuant to R.S. 23:1225(A) made in connection with a claim not in dispute may be made by motion on form LWC-WC-1005(A) or by letter, filed in the appropriate district office. When properly filed, the motion or letter requesting an offset may be granted ex parte from date of filing. Such offsets shall not be taken unless the social security offset has been removed. No fee shall be charged in connection with a request made under this Subsection.

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:281 (February 1999), amended LR 25:1871 (October 1999), LR 33:659 (April 2007), amended by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 37:

Subchapter C. Financial and Compliance Hearings

§6509. Financial and Compliance Hearings

A. Any party may request a mediation conference which shall be held within 15 days of the filing of an appeal for financial and compliance matters.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:281 (February 1999), amended LR 25:1871 (October 1999), LR 33:659 (April 2007), amended by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 37:

Chapter 66. Miscellaneous

Subchapter A. General

§6605. Fees

A. ...

1. filing of 1008-\$30; filing of 1011 where no 1008 has been filed -\$30;

2. - 4. ...

5. filing by facsimile transmission-\$5 for the first 10 pages and \$1 for each page thereafter;

6. - 7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Labor, Office of Workers' Compensation Administration, LR 25:281 (February 1999), amended LR 25:1871 (October 1999), amended by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 37:

Family Impact Statement

1. The Effect on the Stability of the Family. The proposed amendments to the hearing 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 amendments to the hearing 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 amendments to the hearing 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 amendments to the hearing 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 amendments to the hearing rules 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 amendments to the hearing rules for the Office of Workers' Compensation Administration.

Public Comments

Inquiries concerning the proposed amendment and reenactment may be directed to Wes Hataway, Assistant Secretary, Office of Workers' Compensation Administration, Louisiana Department of Labor, P.O. Box 94040, Baton Rouge, LA 70804-9040. Interested persons may submit data, views, arguments, information or comments on the proposed amendment and reenactment in writing, to the Louisiana Department of Labor, P.O. Box 94040, Baton Rouge, LA 70804-9040, Attention: Wes Hataway, Assistant Secretary, Office of Workers' Compensation Administration. Written comments must be submitted and received by the

department within 20 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 on this notice.

Curt Eysink
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Hearing Rules**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

This proposed rule provides stipulations and procedures related to the Worker's Compensation program. The proposed rule addresses in total or in part numerous procedures and stipulations regarding the hearing process for disputed work's compensation claims. In addition, the rules provide direction regarding the changes instituted by Act 53 of the 2010 Regular Session of the Legislature allowing for voluntary mediation of disputed claims using either a Louisiana Workforce Commission (LWC) or private mediator where prior practice was mandatory mediation with a LWC mediator.

It is anticipated that state government expenditures will not be impacted as mediation becomes voluntary since it is not expected, nor has it been realized, that the number of mediation will decrease. Since the program implementation in August, 2010, requests for mediation with a LWC mediator has declined but the number of mediations per disputed claim has increased because mediations are scheduled well before the trial date creating the potential for multiple sessions concerning the same claim. Additionally, these rules provide for mediation prior to the filing of a disputed claim. These pre-dispute mediations have the potential to increase the number of mediations conducted by LWC mediators inasmuch as heretofore no pre-dispute mediations were allowed. The department will absorb any additional duties that may arise by utilizing the current staff within the existing budget. There is no impact to administrative expenses of local government units as a result of this measure.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
OR LOCAL GOVERNMENTAL UNITS (Summary)**

The Worker's Compensation Administration Fund is filled with assessments paid by insurance companies writing worker's compensation insurance and self-insurers to cover administrative functions related to worker's compensation. There is no fiscal impact to these assessments caused by these changes in the Hearing Rules. This proposed rule may immaterially impact revenue collections of the state government due to a fee change for fax reception of filing documents sent by the parties. The proposed rule changes the fee from \$5 per transmittal to \$5 for the first 10 pages and \$1 per page thereafter. Most submissions are below the 10 page threshold but, to the extent that the faxed document exceeds 10 pages, an increase in fee collections will result. The amount of the increased collections is expected to be minimal to non-existent (less than \$10,000). Worker's compensation judgments are not paid through the state budget. Regardless, the quantity and magnitude of judgments are not expected to change due to this rule, which primarily addresses procedures for handling disputes. There is no impact to revenue collections of local government units as a result of this measure.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

To the extent that a party files by fax a document larger than 10 pages, an increased fee will be required, as addressed in Section II above. Due to the filing history, which indicates that most transmittals are less than 10 pages, this impact is expected to be minimal to non-existent. The rule also makes mandatory only one unopposed continuance with remaining continuances at the discretion of the judge. Currently, all requested joint or unopposed continuances shall be granted. This component could serve to make affected parties prepare for trial more expeditiously. All other changes to the rule are procedural and will have no economic impact to directly affected persons or non-governmental groups.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

This proposed rule should not affect competition or employment.

Curt Eysink
Executive Director
1103#058

Greg Albrecht
Chief Economist
Legislative Fiscal Office

Potpourri

POTPOURRI

Department of Agriculture and Forestry Office of Agriculture and Environmental Sciences Division of Pesticide and Environmental Programs

Quarantine Rescissions for Formosan Termites
Hurricanes Katrina and Rita

Effective April 1, 2011, this order rescinds the quarantine titled "Imposition of Quarantine—Hurricane Katrina" for Formosan Termites signed on December 7, 2005; published in the state newspaper, the Baton Rouge *Advocate* on December 13, 2005; and published in the *Louisiana Register* at LR 31:3287 (December 20, 2005) and the quarantine titled "Imposition of Quarantine—Hurricane Rita" for Formosan Termites signed on December 7, 2005; published in the state newspaper, the Baton Rouge *Advocate* on December 13, 2005; and published in the *Louisiana State Register* at LR 31:3288 (December 20, 2005) and any and all previous quarantines regarding Formosan Termites relative to hurricanes Katrina and Rita.

If there are any questions or concerns regarding the recession of these quarantines please contact Tyrone Dudley, Director, Formosan Termite Initiative, P.O. Box 3596, Baton Rouge, LA 70821. Telephone: (225) 925-4578, Fax: (225) 925-3760, E-mail: tyrone_d@ldaf.state.la.us

Mike Strain, DVM
Commissioner

1103#020

POTPOURRI

Department of Health and Hospitals Bureau of Health Services Financing

Coordinated System of Care
Behavioral Health Services

The Department of Health and Hospitals, Bureau of Health Services Financing currently provides coverage and reimbursement for behavioral health services rendered to Medicaid recipients through an array of service programs. Inpatient psychiatric services are furnished in free-standing psychiatric hospitals to recipients who are under the age of 21, or over the age of 65, and in distinct-part psychiatric units of acute care hospitals to recipients of any age. Outpatient mental health services are furnished through the Mental Health Rehabilitation, Mental Health Clinic, Multi-Systemic Therapy and Professional Services Programs. Substance abuse services are currently not covered under the Medicaid Program except for services rendered to recipients under the age of 21.

In an effort to enhance service quality, facilitate access to care, and effectively manage costs, the department proposes to restructure the current service delivery mechanisms by

developing and implementing a comprehensive system for behavioral health services that will be a coordinated system of care. The comprehensive system of behavioral health services is designed to provide an array of Medicaid State Plan and home and community-based waiver services to: all eligible children and youth in need of mental health and substance abuse care; adults with serious and persistent mental illness or co-occurring disorders of mental illness and substance use; and at-risk children and youth with significant behavioral health challenges or co-occurring disorders in or at imminent risk of out-of-home placement. This comprehensive service delivery model is being developed in conjunction with the Department of Children and Family Services, the Department of Education, and the Office of Juvenile Justice.

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to promulgate several Notices of Intent in order to implement a coordinated behavioral health services system under the Louisiana Medicaid Program effective for dates of service on or after January 1, 2012. It is anticipated that implementation of these proposed Rules will increase expenditures for behavioral health services by approximately \$57,994,829 for state fiscal year 2011-2012. This multi-departmental initiative is anticipated to generate savings in state funds that will be used to finance the program.

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

Bruce D. Greenstein
Secretary

1103#104

POTPOURRI

Department of Health and Hospitals Physical Therapy Board

Public Hearing—Substantive Changes to Proposed Rules
Comprehensive Rule Revision
(LAC 46:LIV.Chapters 1–5)

Editor's Note: The Notice of Intent being revised may be viewed on pages 2975-3007 of the December 20, 2010 *Louisiana Register*.

The board published a Notice of Intent to promulgate rules and to repeal and reenact its rules in the December 20, 2010 edition of the *Louisiana Register*. The notice solicited views, arguments, information, written comments and testimony. As a result of its analysis of the written comments and testimony received, the board proposes to amend certain portions of the proposed rules. The proposed rules will be reenacted for the purpose of codification. New rules are in the public's interest and support the board in the

execution of its duty to regulate the industry and promote public safety.

The change to §105 follows. A typographical change in H. Public Comments corrected “execute” to read “executive”.

The changes to §117 follow. The new language conforms with the statute and allows the board to determine the duties of the executive director through a job description for the position.

The changes to §123 follow. The definitions for “physical therapy evaluation,” “prescription,” “referral,” “written treatment plan,” and “wound care and debridement” had substantive changes based on comments and testimony received at the public hearing. The term “written treatment plan” was changed to “treatment plan” in the definitions and the term was changed when used throughout the proposed rules language. The term “wound care and debridement” was changed to “wound debridement.” The definition indicated care which can only be provided by a physical therapist.

The changes to §125 follow. The change was to delete “written” from Treatment Plan.

The change to §129 follows. The duplication of the statement for requirement of payment of fees by the applicant for licensure was corrected.

The changes to Subchapter G, §159 follow. The rule addressed the 60 day time period for a candidate’s eligibility for the National Physical Therapy Examination determined by the Federation of State Boards of Physical Therapy. The board chose to delete the Federation requirement from its rules.

The changes to §175 follow. The changes removed confusion with regard to initial license issuance.

The changes to §181 follow. The changes clarified the transitional process for moving from annual renewal of license to biennial renewal of license.

The change to §187 follows. The change in G.2 changed “direct on-site” supervision to the defined term “on-premises” supervision.

The changes to §193 follow. The entire section was reorganized and rewritten to address prior approval of continuing education courses and to provide requirements for APTA and LPTA sponsored courses.

The changes to §194 follow. The changes include the minimal number of clinical/preventive education hours required for renewal of license, a maximum number of continuing education hours for renewal of license, and the maximum number of education hours that may be obtained by home study, online, internet, or distance learning.

The changes to §195 follow. The changes identified what documentation a clinical instructor must provide to obtain continuing education credit, who is authorized to document the clinical instruction, and included language to address approval for coursework in a postgraduate physical therapy curriculum or transitional DPT program.

The change to §197 follows. The change allowed for a stamp or other image imprinted by a course sponsor as proof of completion of that continuing education activity.

The changes to §198 follow. The change clarified the requirement for obtaining continuing education in the second year of an initial license when a new licensee is a graduate with an exemption from continuing education for the calendar year in which he graduated.

The change to §311 follows. The change reduced the number of education hours required for dry needling education from 100 to 50 based on information received at the public hearing regarding the number of education hours provided by course sponsors for certification.

The changes to §313 follow. The language was reworded for clarity.

The change to §331 follows. The change in E. changed “direct on-site” supervision to the defined term “on-premises” supervision.

The changes to §333 follow. The changes allow the physical therapist to utilize support personnel for assistance in treating the patient on the 6th treatment day and deleted “written” from the term “treatment plan”.

The changes to §335 follow. The changes clarified the role of the physical therapy technician and eliminated the requirement that a supervisor of record was required.

The changes to §337 follow. Changed the term “continuous” to “on-premise” for supervision purposes. The change allowed a PTA to act as a clinical instructor after one year of practice experience.

The change to §341 follows. “Written” was deleted to conform to the defined term “treatment plan.”

In accordance with R.S. 49:968(H)(2) of the Administrative Procedure Act, a hearing will be held on April 27, 2011 at the Louisiana Physical Therapy Board office located at 104 Fairlane Drive, Lafayette, LA 70507.

Cheryl Gaudin
Executive Director

1103#071

POTPOURRI

Department of Natural Resources Office of Conservation

Hearing Notice—CCS Midstream Services, LLC
(Docket NO. ENV 2011-04)

Notice is hereby given that the Commissioner of Conservation will conduct a hearing at 6:00 p.m., Thursday, May 12, 2011, at the Caddo Parish Commission located at 505 Travis Street Government Chambers, Shreveport, Louisiana.

At such hearing, the commissioner, or his designated representative, will hear testimony relative to the application of CCS Midstream Services, LLC, 10845 Highway 1 South, Shreveport, LA 71138. The applicant requests approval from the Office of Conservation to construct and operate a commercial deep well injection waste disposal facility for disposal of exploration and production waste (E and P Waste) fluids located in Township 16 North, Range 12 West, Irregular Section 30 in Caddo Parish.

The application is available for inspection by contacting Mr. Daryl Williams, Office of Conservation, Environmental Division, Eighth Floor of the LaSalle Office Building, 617 North Third Street, Baton Rouge, Louisiana. Copies of the application will be available for review at the Caddo Parish Commission and the Main Branch Shreve Memorial Library in Shreveport, Louisiana no later than 30 days prior to the

hearing date. Verbal information may be received by calling Mr. Williams at (225) 342-7286.

All interested persons will be afforded an opportunity to present data, views or arguments, orally or in writing, at said public hearing. Written comments which will not be presented at the hearing must be received no later than 4:30 p.m., Thursday, May 19, 2011, at the Baton Rouge Office. Comments should be directed to:

Office of Conservation
 Environmental Division
 P.O. Box 94275
 Baton Rouge, Louisiana 70804
 Re: Docket No. ENV 2011-04
 Commercial Facility Well Application
 Caddo Parish

James H. Welsh
 Commissioner

1103#076

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
Bowie Operating Company, LLC	Longwood	S	L M WASKOM	001	76873
Bowie Operating Company	Longwood	S	L M WASKOM	004	86278
Bowie Operating Company	Longwood	S	LILLIAN M WASKOM A	004	142963
Bowie Operating Company	Longwood	S	H A CUSHMAN	007	171274
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;FLRNY UC	001	37315
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;SCOTTUA	001	39550
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;SCOTTUC	001	40711
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;FWPLER A	001	40782

Operator	Field	District	Well Name	Well Number	Serial Number
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;SL HD EL	003	40832
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;DOGAN UA	001	41011
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;SL HD EL	004	41177
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;HRM SFW U	001	41178
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;TILLEY UN	001	41292
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;AGURS	001	41409
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;FWPLER A	002	41459
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;FWPLER C	001	41489
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;DOGAN UB	001	41625
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;JM AGS A	001	41669
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;WPLR HM U	001	41677
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;AGURS	003	41745
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;WISE UN	001	41787
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;R P BRYSN	001	41833
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;AGURS	004	41888
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;J SCOTT A	001	42000
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;FWPLER C	002	42001
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;GM AGURS	001	42051
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;HRM STFW	002	42052
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;COOK UT	001	42099

Operator	Field	District	Well Name	Well Number	Serial Number
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;AGUR S	006	42202
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;F WPLER A	003	42239
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;AGUR S	007	42296
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;J DN UA	001	42357
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;ZACK ABNEY U1	004	42420
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;R BRYSON	002	42454
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;ABNEY UT	001	42471
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;AGUR S	009	42636
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;F WPLER A	004	42707
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;KING UA	001	42728
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;BDWEL UT	001	42812
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;GY-BN UA	001	42837
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;F WPLER A	006	43143
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;KING UB	001	43211
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;FLRN Y UB	001	43239
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;WPLE RUE	001	43339
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;SL HRLD	004	43450
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;F WPLER A	007	43916
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;F WPLER A	008	44825

Operator	Field	District	Well Name	Well Number	Serial Number
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;J W FLRNY	001	52625
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;A G BDWEL	001	66664
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;A DN UB	002	66851
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;J DN UC	003	67202
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;J DN UB	002	67203
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;SL HD EL	018	67995
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;J W DN EL	001	68426
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;ABY- ATK U	001	69318
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;AGUR S	010	96219
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;H H HGRD	004	103691
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;Z ABNEY	001	119357
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;THIGP EN-HEROLD 82	001	184230
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;AGUR S	072	188846
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;AGUR S	073	188847
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;KING 77	001	210875
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;AGUR S 78	001	210940
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;AGUR S 79	001	211900
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;ELLER BE 83	001	212282

Operator	Field	District	Well Name	Well Number	Serial Number
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;YOUNGBLOOD 84	001	212387
Bowie Operating Company	Greenwood -Waskom	S	GW MPT SU;WAPPLER 86	001	212687
Bowie Operating Company	Greenwood -Waskom	S	J T DUNN SWD	001	972943
Trans-Gulf Petroleum Corp	Chemard Lake	S	OLIN	001	135754

James H. Welsh
Commissioner

1103#015

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 0 claims in the amount of \$0 were received for payment during the period of February 1, 2011-February 28, 2011

There were 0 paid and 0 denied.

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 call (225) 342-0122.

Scott A. Angelle
Secretary

1103#014

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