

I. EXECUTIVE ORDERS
 KBB 05-02 Louisiana Task Force on Workforce Competitiveness..... 384
 KBB 05-03 The Board of Parole..... 385

II. EMERGENCY RULES
Agriculture and Forestry
 Office of Agro-Consumer Services, Office of the Commissioner
 Chloramphenicol in Crabs and Crabmeat
 Testing and Sale (LAC 7:XXXV.143 and 145) 387
 Chloramphenicol in Honey
 Testing and Sale (LAC 7:XXXV.141) 390
 Chloramphenicol in Shrimp and Crawfish
 Testing and Sale (LAC 7:XXXV.137 and 139)..... 392
Environmental Quality
 Office of Environmental Assessment
 Expedited Penalty Agreement (LAC 33:I.801, 803, 805, and 807)(OS054E4) 396
Governor
 Boxing and Wrestling Commission
 Boxing and Wrestling
 Emergency Medical Technician Requirement (LAC 46:XI.101 and 115) 401
 Boxing and Wrestling Standards (LAC 46:XI.Chapters 1, 3 and 5) 402
 Division of Administration, Racing Commission
 Corrupt and Prohibited Practices (LAC 35:I.1720) 407
 Human Recombinant Erythropoietin and/or Darbepoietin (LAC 35:I.1716)..... 407
 Vesting of Title; Tests (LAC 35:XI.9913)..... 407
Health and Hospitals
 Board of Nursing
 Licensure as Advanced Practice Registered Nurse (LAC 46:XLVII.4507) 408
 Office of the Secretary, Bureau of Health Services Financing
 Disproportionate Share Hospital Payment Methodologies (LAC 50:V.301-315)..... 410
 Early and Periodic Screening, Diagnosis and Treatment Program
 Early Intervention Services for Infants and Toddlers with Disabilities (LAC 50:XV.8109) 416
 Targeted Case Management Services (LAC 50:XV.10701) 417
Social Services
 Office of Family Support
 Food Stamp Program
 Standard and Basic Utility Allowance (LAC 67:III.1965 and 1966) 417

III. RULES
Agriculture and Forestry
 Livestock Sanitary Board
 Public Livestock Auction Charters (LAC 7:XXI.111) 419
 Seed Commission
 Seed Certification Standards (LAC 7:XIII.125 and 143) 419
Economic Development
 Office of the Secretary
 Governor's Economic Development Rapid Response Program (LAC 13:V.Chapter 2) ... 420
Education
 Board of Elementary and Secondary Education
 Bulletin 111
 Louisiana School, District, and State Accountability System (LAC 28:LXXXIII.3501, 4310, and 4313) 423
 Bulletin 746
 Louisiana Standards for State Certification of School Personnel
 PRAXIS Exams and Passing Scores for Louisiana Certification (LAC 28:I.903) 425
Environmental Quality
 Office of Environmental Assessment
 Cooling Water Intake Structures at Existing Phase II Facilities (LAC 33:IX.2501, 2707, 3113, 4701, 4703, 4705, 4707, 4709, 4719, 4731, 4733, 4735, 4737, 4739, 4741, 4743, 4745, 4747, 5911, and 7103)(WQ057*) 425
Governor
 Division of Administration, Office of Group Benefits
 EPO Plan of Benefits
 Hearing Aids for Minor Dependents (LAC 32:V.301 and 317) 439
 MCO Plan of Benefits
 Hearing Aids for Minor Dependents (LAC 32:IX.301 and 317)..... 440
 PPO Plan of Benefits
 Hearing Aids for Minor Dependents (LAC 32:III.301 and 317) 441

This public document was published at a total cost of \$2,100.00. Five hundred copies of this public document were published in this monthly printing at a cost of \$2,100.00. The total cost of all printings of this document including reprints is \$2,100.00. This document was published by Moran Printing, Inc. 5425 Florida Boulevard, Baton Rouge, LA 70806, as a service to the state agencies in keeping them cognizant of the new rules and regulations under the authority of R.S. 49:950-971 and R.S. 981-999. This material was printed in accordance with standards for printing by state agencies established pursuant to R.S. 43:31. Printing of this material was purchased in accordance with the provisions of Title 43 of the Louisiana Revised Statutes.

The Office of the State Register provides auxiliary aids for the *Louisiana Register* for visually impaired individuals. By appointment, oral presentation of the *Register* is available at the Office of the State Register, or an audiocassette tape of requested sections of the *Register* can be provided for the cost incurred by the Office of the State Register in producing such a tape. For more information contact the Office of the State Register.

Health and Hospitals

Board of Physical Therapy Examiners **C**Physical Therapy Services without Prescription/Referral (LAC 46:LIV.306)..... 441
Office of the Secretary, Bureau of Health Services Financing **C**Children's Respite Care Centers **C**Licensing (LAC 48:I.Chapter 80) 442

Insurance

Office of the Commissioner **C**Long-Term Care Insurance (LAC 37:XIII.Chapter 19) 461

Revenue

Policy Services Division **C**Electronic Funds Transfer (LAC 61:I.4910) 483

Social Services

Office of Community Services **C**Developmental and Socialization Activities Program for Foster Children (LAC 67:V.3507) 484
Office of Family Support **C**TANF Initiatives **C**Adoptions, Amendments and Repeals (LAC 67:III.Chapters 55 and 56)..... 484
TANF Initiatives **C**Development and Socialization Activities Program for Foster Children (LAC 67:III.5579)..... 488

IV. NOTICES OF INTENT

Economic Development

Auctioneer's Licensing Board **C**Licensing of Auction Businesses and Requirement of Bonds (LAC 46:III.Chapters 1, 11,12, 13, 15, 17, 23, 25, 27, and 29) 489

Education

Board of Elementary and Secondary Education **C**Bulletin 111 **C**The Louisiana School, District, and State Accountability System (LAC 28:LXXXIII.4303 and 4313) 494
Bulletin 741 **C**Louisiana Handbook for School Administrators (LAC 28:CXV.Chapters 1-35) 495
Donation of Immovables (LAC 28:I.1303) 557
Donation of Movables, Finance and Property (LAC 28:I.1303, 1705, and 1709) 558

Environmental Quality

Office of Environmental Assessment **C**Authorized Medical Physicist and Medical Event (LAC 33:XV.703, 704, and 763)(RP040) 560
Incorporation by Reference **C**2004 (LAC 33:I.3931; V.3099; IX.2301, 4901, and 4903; and XV.1517)(OS062*) 561
Insignificant Activities List (LAC 33:III.501)(AQ244)..... 564
Medical Events Occurring from X-Rays (LAC 33:XV.102, 613, 615, 915, and 917)(RP038)..... 565
Air Regulations (LAC 33:III.507, 1509, and 2305)(AQ248) 567

Governor

Crime Victims Reparations Board **C**Award Limits (LAC 22:XIII.503) 568
Division of Administration, Facility Planning and Control **C**Capital Improvement Projects (LAC 34:III.Chapters 1 and 3) 568

Health and Hospitals

Board of Nursing **C**Licensure as Advanced Practice Registered Nurse (LAC 46:XLVII.4507) 575
Office of the Secretary, Bureau of Health Services Financing **C**Hospital Licensing Standards (LAC 48:I.Chapter 93) 576
Intermediate Care Facilities for the Mentally Retarded **C**Standards for Payment (LAC 50:II.10307) 581
Third Party Liability **C**Newborn Notification Requirements..... 582
Urine Drug Screening Laboratories..... 584

Insurance

Office of the Commissioner **C**Continuing Education **C**Rule Number 10 (LAC 37:XI.717 and 723)..... 584
Regulation 86 **C**Dependent Coverage of Newborn Children in the Group and Individual Market (LAC 37:XIII.Chapter 111) 586
Regulation Number 83 **C**Domestic Insurer's Use of Custodial Agreements and the Use of Clearing Corporations (LAC 37:XIII.Chapter 105) 589

Public Safety and Corrections

Office of Corrections Services **C**Adult and Juvenile Services **C**Notice (LAC 22:I.367) 594
Air Traffic Regulation, Attorney Visits, and Inmate Marriage Request (LAC 22:I.105, 317, and 329) 594
General Prohibited Behaviors (LAC 22:I.365)..... 597
Public Information Program and Medical Reimbursement Plan (LAC 22:I.339, 2103, 2105)..... 597

Revenue

Policy Services Division **C**Absorption of the Sales Tax by Sellers of Taxable Goods and Services (LAC 61:I.4311) 599
Absorption of the Sales Tax by Sellers of Taxable Goods and Services (LAC 61:I.4351) 600
Reporting Format for Local Sales Tax Return (LAC 61:II.101)..... 601

V. POTPOURRI	
Agriculture and Forestry	
Horticulture Commission Landscape Architect Registration Exam.....	603
Retail Floristry Examination	603
Environmental Quality	
Office of Environmental Assessment, Air Quality Assessment Division 2004 State Implementation Plan (SIP); General Revisions.....	603
Disposal of Oil and Gas Exploration and Production (E&P) Waste in Solid Waste Landfills	604
Natural Resources	
Office of Conservation Orphaned Oilfield Sites.....	605
Office of the Secretary, Fisherman's Gear Compensation Fund Loran Coordinates.....	605
Social Services	
Office of Family Support Temporary Assistance to Needy Families (TANF); Caseload Reduction Report for Louisiana	605
VI. INDEX	607

Executive Orders

EXECUTIVE ORDER KBB 05-02

Louisiana Task Force on Workforce Competitiveness

WHEREAS, Louisiana must have a well-educated and skilled workforce to compete in the 21st century global economy. As the Southern Growth Policies Board notes, "as Southern businesses face world-wide competition, we have a choice of learning to work smarter or being willing to work cheaper. Since the second option is unacceptable, we must make sure that our workforce is always globally competitive;"

WHEREAS, a recent report released by the Louisiana Workforce Commission indicated that, when looking at the high school freshman class of 1999, sixty-seven percent attempted to enter the workforce without any training or education beyond high school;

WHEREAS, Louisiana Department of Labor's workforce projections indicate that eighty-two percent of jobs available in 2010 will require some advanced skills training or education and the trend is for jobs of the future to continue to demand more and more advanced skills and education;

WHEREAS, in December 2004, The Council for a Better Louisiana released a survey of employers that showed how access to a strong trained and skilled workforce is one of their greatest business challenges; and

WHEREAS, the above stated survey results are indicative of the gap between the skill sets and education possessed by our citizens seeking employment and the skill sets and education required by employers in available jobs;

WHEREAS, as future jobs demand more and more advanced skills and education, it is essential for Louisiana to strategically develop public policy that encourages, facilitates and rewards the continued skills training and education of our citizenry, thereby improving the competitiveness of our workforce;

WHEREAS, an available competitive workforce is a critical element to a vital and growing economy;

WHEREAS, to develop a competitive workforce, Louisiana's workforce development system must align, coordinate and leverage federal, state and local resources, both public and private, toward common goals;

WHEREAS, to encourage a competitive workforce, Louisiana's workforce development system must promote advanced skills training and education in a variety of environments that is readily accessible, affordable and accommodating to traditional and nontraditional students;

WHEREAS, to promote a competitive workforce, Louisiana's workforce development system must reward, or provide incentives, for desirable behavior for all stakeholders to the system;

WHEREAS, to ensure success of the system, Louisiana's workforce development system must be heavily influenced by Louisiana businesses so that the training and education are meaningful and geared toward current and jobs of the future found in businesses seeking to establish, grow and expand in Louisiana;

WHEREAS, to achieve global competitiveness, Louisiana's workforce development system must be aligned and coordinated among state and local partners, both public and private, to ensure that Louisiana's citizens have the opportunity to acquire the skills and education necessary for economic prosperity and Louisiana's business have a strong supply of skilled workers;

WHEREAS, the state of Louisiana has made substantial progress in improving options for workforce training through such initiatives as the Incumbent Worker Training Fund, Program, Industry-Based Certifications and the Work Ready Certificate;

WHEREAS, Act 1 of the 1977 1997 Regular Session of the Louisiana Legislature established the Workforce Commission in the Office of the Governor to develop a multi-agency approach to job training and education and to advise the governor of workforce education and training policy;

WHEREAS, the Federal Workforce Investment Act of 1998, 29 U.S.C.A. §2801 et seq., requires a state workforce board to serve as the coordinating and policy entity for the implementation of the Workforce Investment Act (hereafter "Act");

WHEREAS, the Workforce Commission has been named the state board for the purposes of the Act and assumes the duties of the state board as outlined in the Act;

WHEREAS, the Workforce Commission and partner agencies are leading the development of a workforce education and training infrastructure which recognizes the need for public/ and private sector cooperation and coordination;

WHEREAS, workforce competitiveness still remains a critical issue of importance to Louisiana businesses;

NOW THEREFORE I, KATHLEEN BABINEAUX BLANCO, Governor of the state of Louisiana, by virtue of the authority vested by the Constitution and laws of the state of Louisiana, do hereby order and direct as follows:

SECTION 1: The Louisiana Task Force on Workforce Competitiveness (hereafter "Task Force") is hereby created within the executive department, Workforce Commission, Office of the Governor.

SECTION 2: The duties of the Task Force shall include, but are not limited to, the following:

A. Identifying the necessary components to produce an effective and responsive statewide workforce development system that is responsive to the needs of employers and job seekers;

B. Defining the state of Louisiana's workforce vision (hereafter "Louisiana's Workforce Vision"); the type of system desired by the business community and job seekers;; the system qualities that are valued;; and the outcomes to be achieved;

C. Assessing the competitive environment, including relevant state and national economic, employment, occupational and educational trends and the overall quality of the Louisiana workforce;

D. Developing and understanding the current system, including its efficiency and effectiveness, its strengths and weaknesses and opportunities for improvement;

E. Researching the best practices of workforce development systems in other states;

F. Developing an understanding and assessment of the statewide capacity of workforce development services, including programs offered, administrative funds, training funds and administrative/ and government structures;

G. Recommending strategies to achieve the Louisiana Workforce Vision by:

1) creating an organizational structure and system of funding to better enable employers and workers to gain easy access to workforce training;

2) prioritizing workforce needs resources in support of economic development efforts of the state;

3) establishing appropriate accountability measures; and

4) establishing policy or statutory changes; and

H. Supporting efforts to implement the governor's workforce development reforms.

SECTION 3: On or before April 15, 2005, the Task Force shall submit a preliminary report of its recommendations that may require legislation to the governor and by August 31, 2005, the Task Force shall submit to the governor a final report of its findings and recommendations to the governor.

SECTION 4: The Task Force shall be composed of a maximum of twenty-three (23) members who, unless otherwise specified, shall be appointed by and serve at the pleasure of the governor. The Task Force members shall be selected as follows:

A. The governor or the governor's designee;

B. The president of the Louisiana State Senate, or the president's designee;

C. The speaker of the Louisiana House of Representatives, or the speaker's designee;

D. The secretary of the Department of Labor, or the secretary's designee;

E. The secretary of the Department of Economic Development, or the secretary's designee;

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

G. The commissioner of Higher Education, or the commissioner's designee;

H. The president of the Louisiana Community and Technical College System, or the president's designee;

I. The chair of the Louisiana Workforce Commission, or the chair's designee;

J. The president of the Louisiana Police Jury Association, or the president's designee;

K. One (1) mayor who is a member of the Louisiana Municipal Association;

L. One (1) representative of the American Federation of Labor and Congress of Independent Organizations (AFL-CIO);

M. One (1) representative of the Council for a Better Louisiana (CABL);

N. One (1) representative of the Louisiana Association of Business and Industry;

O. One (1) representative of the Louisiana Hospital Association;

P. One (1) representative of the Restaurant Association;

Q. One (1) representative of the Louisiana Chemical Association;

R. One (1) representative of the National Federation of Independent Businesses;

S. One (1) representative of the Association of General Contractors;

T. One (1) representative of the Louisiana Automobile Dealers Association;

U. One (1) representative of the Public Affairs Research Council (PAR);

V. One (1) representative of a local chamber of commerce; and

W. One (1) representative of a regional/ or local economic development entity.

SECTION 5: The chair of the Task Force shall be appointed by the governor. All other officers, if any, shall be elected by and from the membership of the Task Force.

SECTION 6: The Task Force shall meet at regularly scheduled intervals and at the call of the chair. The Task Force shall hold its first meeting no later than January 21, 2005.

SECTION 7:

A. Task Force members shall not receive additional compensation or a per diem from the Office of the Governor for serving on the Task Force.

B. Task Force members who are employees or elected public officials 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.

C. Task Force members who are also members of the Louisiana Legislature may seek a per diem from the Louisiana State Senate or House of Representatives, as appropriate, for their attendance.

SECTION 8: Support staff, facilities, and resources for the Task Force shall be provided by the Office of the Governor, Workforce Commission.

SECTION 9: 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 Task Force in implementing the provisions of this Order.

SECTION 10: 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 12th day of January, 2005.

Kathleen Babineaux Blanco
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
0502#072

EXECUTIVE ORDER KBB 05-03

The Board of Parole

WHEREAS, Executive Order No. KBB 2004-16, issued on July 6, 2004, reestablished the position of vice-chair within the Board of Parole (hereafter "the Board");

WHEREAS, the Board, created within the Department of Public Safety and Corrections by R.S. 15:574.2, consists of seven (7) members appointed by and serving at the pleasure of the governor;

WHEREAS, R.S. 15:574.2 (A)(3) provides that the actual salaries of each of the members shall be authorized by executive order; and

WHEREAS, it is necessary to modify the duties of the vice-chair of the Board and to authorize the actual salaries of the chair, vice-chair and other members of the Board;

NOW THEREFORE I, KATHLEEN BABINEAUX BLANCO, Governor of the state of Louisiana, by virtue of the authority vested by the Constitution and laws of the state of Louisiana, do hereby order and direct as follows:

SECTION 1: The position of vice-chair of the Board is hereby created. The governor shall select the vice-chair from its membership.

SECTION 2: The vice-chair shall preside in the absence of the chair and shall, in addition to such other duties assigned by the governor, assist the chair in developing and administering the schedule of parole hearings in accordance with R.S. 15:574.4(B)(1), and assist the chair in the preparation for the Board, for its adoption, such rules, regulations, and procedures deemed necessary and proper to facilitate the effective operation of the Board.

SECTION 3: Members of the Board shall, in accordance with the compensation limits set forth in R.S. 15:574.2(A)(3), receive the following annual salaries:

A. The chair of the Board shall receive an annual salary of fifty thousand dollars (\$50,000);

B. The vice-chair of the Board shall receive an annual salary of forty-seven thousand dollars (\$47,000);

C. Each of the other members of the Board shall receive an annual salary of forty-four thousand dollars: (\$44,000);

D. The chair, vice-chair and other members of the Board shall be reimbursed for necessary travel and other expenses actually incurred in the discharge of his/her duties.

SECTION 4: The chair and the vice-chair shall work with the Governor's executive counsel and assistant executive counsel in accomplishing the duties set forth in Section 2 of this Order.

SECTION 5: Executive Order No. KBB 2004-16, issued on July 6, 2004, is hereby rescinded.

SECTION 6: The provisions of this Order are 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 14th day of January, 2005.

Kathleen Babineaux Blanco
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
0502#073

Emergency Rules

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry
Office of Agro-Consumer Services
Office of the Commissioner

Chloramphenicol in Crabs and Crabmeat Testing and Sale
(LAC 7:XXXV.143 and 145)

The Commissioner of Agriculture and Forestry hereby adopts the following Emergency Rules governing the testing and sale of crab or crabmeat in Louisiana. These Rules are being adopted in accordance with R.S. 3:2A, 3:3B, R.S. 3:4608 and the emergency rule provisions of R.S. 49:953 B of the Administrative Procedure Act.

The commissioner has promulgated these rules and regulations to implement standards relating to Chloramphenicol in crab or crabmeat that are consistent with standards adopted by the FDA regarding Chloramphenicol in foods. All crab or crabmeat sold in Louisiana must meet the standards adopted by the commissioner, herein, prior to distribution and sale.

Chloramphenicol is a broad-spectrum antibiotic that has been restricted by the FDA for use in humans only in those cases where other antibiotics have not been successful. The FDA has set a zero tolerance level for Chloramphenicol in food and has prohibited the extra label use of Chloramphenicol in the United States in food producing animals, (21 CFR 530.41).

Chloramphenicol is known to cause aplastic anemia, which adversely affects the ability of a person's bone marrow to produce red blood cells. Aplastic anemia can be fatal. In addition, according to the National Institute on Environmental and Health Sciences, Chloramphenicol can reasonably be anticipated to be a human carcinogen. In widely accepted references such as "Drugs in Pregnancy and Lactation," the use of Chloramphenicol is strongly dissuaded during pregnancy, especially late pregnancy. Chloramphenicol can be transmitted to an unborn child through the placenta and to an infant through the mother's milk. The dosage transmitted to an unborn child is essentially the same dosage as is taken in by the mother. However, the unborn child is unable to metabolize Chloramphenicol as efficiently, thereby causing the risk of an increasing toxicity level in the unborn child. Although the effect on an infant as a result of nursing from a mother who has taken Chloramphenicol is unknown, it is known that such an infant will run the risk of bone marrow depression.

Recently, FDA, the states of Alabama and Louisiana have found Chloramphenicol in crab or crabmeat imported from other countries. The department has found Chloramphenicol in crab or crabmeat imported from Vietnam, Thailand and China. The possibility exists that other countries may export Chloramphenicol-contaminated crab or crabmeat to the U.S.A.

The sale of such imported crab or crabmeat in Louisiana will expose Louisiana's citizens, including unborn children

and nursing infants, to Chloramphenicol, a known health hazard. The sale, in Louisiana, of crab or crabmeat containing Chloramphenicol presents an imminent peril to the public's health, safety and welfare. This peril can cause consumers to quit buying crab or crabmeat from any source, including Louisiana. If consumers cease to buy, or substantially reduce, their purchases of Louisiana crab or crabmeat then Louisiana's crab industry will be faced with substantial economic losses. Any economic losses suffered by Louisiana's crab industry will be especially severe in light of the current economic situation, thereby causing an imminent threat to the public welfare.

The Commissioner of Agriculture and Forestry has, therefore, determined that these Emergency Rules are necessary to immediately implement testing of crab or crabmeat for Chloramphenicol, to provide for the sale of crab or crabmeat and any products containing crab or crabmeat that are not contaminated with Chloramphenicol. These Rules become effective upon signature and will remain in effect 120 days, unless renewed by the commissioner or until permanent rules are promulgated.

Title 7

AGRICULTURE AND ANIMALS

Part XXXV. Agro-Consumer Services

Chapter 1. Weights and Measures

§143. Chloramphenicol in Crab and Crabmeat

Prohibited; Testing and Sale of

A. Definitions

Crab Any such animals, whether whole, portioned, processed, shelled, and any product containing any crab or crabmeat.

Food Producing Animals Both animals that are produced or used for food and animals, such as seafood, that produce material used as food.

Geographic Area A country, province, state, or territory or definable geographic region.

Packaged Crab Any crab or crabmeat, as defined herein, that is in a package, can, or other container, and which is intended to eventually be sold to the ultimate retail purchaser in the package, can or container.

B. No crab or crabmeat may be held, offered or exposed for sale, or sold in Louisiana if such crab or crabmeat contains Chloramphenicol.

C. No crab or crabmeat that is harvested from or produced, processed or packed in a geographic area, that the commissioner declares to be a location where Chloramphenicol is being used on or found in food producing animals or in products from such animals, may be held, offered or exposed for sale, or sold in Louisiana without first meeting the requirements of Subsection E. No crab or crabmeat from any such geographic area may be used, as an ingredient in any food held, offered or exposed for sale, or sold in Louisiana without first meeting the requirements of Subsection E.

D. The commissioner may declare a geographic area to be a location where Chloramphenicol is being used on or found in food producing animals or in products from such

animals, based upon information that would lead a reasonable person to believe that Chloramphenicol is being used on or found in food producing animals, or in products from such animals, in that geographic area.

1. Any such declaration shall be subject to promulgation in accordance with the provisions of the Administrative Procedure Act.

2. The commissioner may release any such geographic area from a previous declaration that Chloramphenicol is being used on food producing animals in that location. Any such release shall be subject to promulgation in accordance with the Administrative Procedure Act.

E. Crab or crabmeat that comes from a geographic area declared by the commissioner to be a location where Chloramphenicol is being used on, or is found in food producing animals or in products from such animals, must meet the following requirements for sampling, identification, sample preparation, testing and analysis before being held, offered or exposed for sale, or sold in Louisiana.

1. Sampling

a. The numbers of samples that shall be taken are as follows.

i. Two samples are to be taken of crab or crabmeat that are in lots of fifty pounds or less.

ii. Four samples are to be taken of crab or crabmeat that are in lots of fifty-one to one hundred pounds.

iii. Twelve samples are to be taken of crab or crabmeat that are in lots of one hundred and one pounds up to fifty tons.

iv. Twelve samples for each fifty tons are to be taken of crab or crabmeat that are in lots of over fifty tons.

b. For packaged crab or crabmeat, each sample shall be at least six ounces, (170.1 grams), in size and shall be taken at random throughout each lot of crab or crabmeat. For all other crab or crabmeat, obtain approximately one pound, (454 grams), of crab or crabmeat per sample from randomly selected areas.

c. If the crab or crabmeat to be sampled consists of packages of crab or crabmeat grouped together, but labeled under two or more trade or brand names, then the crab or crabmeat packaged under each trade or brand name shall be sampled separately. If the crab or crabmeat to be sampled are not packaged, but are segregated in such a way as to constitute separate groupings, then each separate grouping shall be sampled separately.

d. A composite of the samples shall not be made. Each sample shall be tested individually. Each sample shall be clearly identifiable as belonging to a specific group of crab or crabmeat. All samples shall be kept frozen and delivered to the lab.

2. Each sample shall be identified as follows:

a. any package label;

b. any lot or batch numbers;

c. the country, province and city of origin;

d. the name and address of the importing company;

e. unique sample number identifying the group or batch sample and subsample extension number for each subsample.

3. Sample Preparation

a. For small packages of crab or crabmeat up to and including one pound, use the entire sample. Shell the crabs,

exercising care to exclude all shells from sample. Grind sample with food processor type blender while semi-frozen or with dry ice. Divide the sample in half. Use half of the sample for the original analysis portion and retain the other half of the sample in a freezer as a reserve.

4. Sample Analysis

a. Immunoassay test kits may be used if the manufacturer's published detection limit is one part per billion, (1 ppb) or less. Acceptable test kits include r-iopharm Ridascreen Chloramphenicol enzyme immunoassay kit and the Charm II Chloramphenicol kit. The commissioner may authorize other immunoassay kits with appropriate detection limits of 1 ppb or below to be used. Each sample must be run using the manufacturer's test method. The manufacturer's specified calibration curve must be run with each set. All results 1 ppb or above must be assumed to be Chloramphenicol unless further testing by approved GC/LC method indicates the result to be an artifact.

b. HPLC-MS, GC-ECD, GC-MS methods currently approved by FDA, the United States Department of Agriculture or the Canadian Food Inspection Agency with detection limits of 1 ppb or below may also be used.

c. Other methods for sampling, identification, sample preparation, testing and analysis may be used if expressly approved in writing by the commissioner.

5. Any qualified laboratory may perform the testing and analysis of the samples unless the laboratory is located in any geographic area that the commissioner has declared to be a location where Chloramphenicol is being used on or found in food producing animals, or in products from such animals. The commissioner shall resolve any questions about whether a laboratory is qualified to perform the testing and analysis.

6. The laboratory that tests and analyzes a sample or samples for Chloramphenicol shall certify the test results in writing.

7. A copy of the certified test results along with the written documentation necessary to show the methodology used for the sampling, identification, sample preparation, testing and analysis of each sample shall be sent to and actually received by the department prior to the crab or crabmeat being held for sale, offered or exposed for sale, or sold in Louisiana.

a. The test results and accompanying documentation must contain a test reference number.

b. The certified test results and the accompanying documentation must be in English and contain the name and address of the laboratory and the name and address of a person who may be contacted at the laboratory regarding the testing of the crab or crabmeat.

8. Upon actual receipt by the department of a copy of the certified test results and written documentation required to accompany the certified test results then the crab or crabmeat may be held, offered or exposed for sale, or sold in Louisiana, unless a written stop-sale, hold or removal order is issued by the commissioner.

9. A copy of the test results, including the test reference number, shall either accompany every shipment and be attached to the documentation submitted with every shipment of such crab or crabmeat sent to each location in

Louisiana or shall be immediately accessible to the department, upon request, from any such location.

F. Any person who is seeking to bring crab or crabmeat that is required to be sampled and tested under this Section, into Louisiana, or who holds, offers or exposes for sale, or sells such crab or crabmeat in Louisiana shall be responsible for having such crab or crabmeat sampled and tested in accordance with Subsection E. Any such person must, at all times, be in full and complete compliance with all the provisions of this Section.

G. The commissioner may reject the test results for any crab or crabmeat if the commissioner determines that the methodology used in sampling, identifying, sample preparation, testing or analyzing any sample is scientifically deficient so as to render the certified test results unreliable, or if such methodology was not utilized in accordance with, or does not otherwise meet the requirements of this Section.

H. In the event that any certified test results are rejected by the commissioner then any person shipping or holding the crab or crabmeat will be notified immediately of such rejection and issued a stop-sale, hold or removal order by the commissioner. Thereafter, it will be the duty of any such person to abide by such order until the commissioner lifts the order in writing. Any such person may have the crab or crabmeat retested in accordance with this Section and apply for a lifting of the commissioner's order upon a showing that the provisions of this Section have been complied with and that the crab or crabmeat are certified as being free of Chloramphenicol.

I. The department may inspect, and take samples for testing, any crab or crabmeat, of whatever origin, being held, offered or exposed for sale, or sold in Louisiana.

J. A stop-sale, hold or removal order, including a prohibition on disposal, may be placed on any crab or crabmeat that does not meet the requirements of this Section. Any such order shall remain in place until lifted in writing by the commissioner.

K. The department may take physical possession and control of any crab or crabmeat that violate the requirements of this Section if the commissioner finds that the crab or crabmeat presents an imminent peril to the public health, safety and welfare and that issuance of a stop-sale, hold or removal order will not adequately protect the public health, safety and welfare.

L. The commissioner declares that he has information that would lead a reasonable person to believe that Chloramphenicol is being used on or found in food producing animals, or in products from such animals, in the following geographic area(s).

1. The geographic area or areas are:
 - a. the countries of Vietnam, Thailand, Mexico, Malaysia and China.
2. All crab and crabmeat harvested from or produced, processed or packed in any of the above listed geographic areas are hereby declared to be subject to all the provisions of this Section, including sampling and testing provisions.

M. All records and information regarding the distribution, purchase and sale of crabs or crabmeat or any food containing crab or crabmeat shall be maintained for two years and shall be open to inspection by the department.

NP. Penalties for any violation of this Section shall be the same as and assessed in accordance with R. S. 3:4624.

O. The effective date of this Section is March 14, 2003.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2, 3:3, and 3:4608.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Office of the Commissioner, LR 31:

§145. Labeling of Foreign Crab and Crabmeat by Country of Origin

A. Definitions

Crab or Crabmeat Any crab or crabmeat, whether whole, portioned, processed or shelled and any product containing any crab or crabmeat.

Foreign Crab or Crabmeat Any crab or crabmeat, as defined herein that is harvested from or produced, processed or packed in a country other than the United States.

B. All foreign crab or crabmeat, imported, shipped or brought into Louisiana shall indicate the country of origin, except as otherwise provided in this Section.

C. Every package or container that contains foreign crab or crabmeat, shall be marked or labeled in a conspicuous place as legibly, indelibly, and permanently as the nature of the package or container will permit so as to indicate to the ultimate retail purchaser of the crab or crabmeat with the English name of the country of origin.

1. Legibility must be such that the ultimate retail purchaser in the United States is able to find the marking or label easily and read it without strain.

2. Indelibility must be such that the wording will not fade, wash off or otherwise be obliterated by moisture, cold or other adverse factors that such crab or crabmeat are normally subjected to in storage and transportation.

3. Permanency must be such that, in any reasonably foreseeable circumstance, the marking or label shall remain on the container until it reaches the ultimate retail purchaser unless it is deliberately removed. The marking or label must be capable of surviving normal distribution and storing.

D. When foreign crab or crabmeat are combined with domestic crab or crabmeat, or products made from or containing domestic crab or crabmeat, the marking or label on the container or package or the sign included with any display shall clearly show the country of origin of the foreign crab or crabmeat.

E. In any case in which the words "United States," or "American," the letters "U.S.A.," any variation of such words or letters, or the name of any state, city or location in the United States, appear on any container or package containing foreign crab or crabmeat, or any sign advertising such foreign crab or crabmeat for sale, and those words, letters or names may mislead or deceive the ultimate retail purchaser as to the actual country of origin of the crab or crabmeat, then the name of the country of origin preceded by "made in," "product of," or other words of similar meaning shall appear on the marking, label or sign. The wording indicating that the crab or crabmeat is from a country other than the United States shall be placed in close proximity to the words, letters or name that indicates the crab or crabmeat is a product of the United States in a legible, indelible and permanent manner. No provision of this Section is intended to or is to be construed as authorizing the use of the words "United States," "American," or the letters "U.S.A.," or any variation of such words or letters, or the name of any state, city or location in the United States, if such use is deceptive, misleading or prohibited by other federal or state law.

F. Foreign crab or crabmeat shall not have to be marked or labeled with the country of origin if such crab or crabmeat is included as components in a product manufactured in the United States and the crab or crabmeat is substantially transformed in the manufacturing of the final product. But in no event shall thawing, freezing, packing, packaging, re-packing, re-packaging, adding water, portioning, shelling, processing, peeling, partially cooking or combining with domestic crab or crabmeat shall not be considered to be a substantial transformation.

G. The commissioner shall have all the powers granted to him by law, or in accordance with any cooperative endeavor with any other public agency, to enforce this Section, including the issuance of stop-sale, hold or removal orders and the seizing of crab or crabmeat mislabeled or misbranded as to the country of origin.

H. Penalties for any violation of this Section shall be the same as and assessed in accordance with R. S. 3:4624.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2, 3:3, and 3:4608.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Office of the Commissioner, LR 31:

Bob Odom
Commissioner

0502#003

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry Office of Agro-Consumer Services Office of the Commissioner

Chloramphenicol in Honey Testing and Sale (LAC 7:XXXV.141)

The Commissioner of Agriculture and Forestry hereby adopts the following Emergency Rules governing the testing and sale of honey in Louisiana. These Rules are being adopted in accordance with R.S. 3:2A, 3:3B, R.S. 3:4608 and the emergency rule provisions of R.S. 49:953 B of the Administrative Procedure Act.

The commissioner has promulgated these Rules and regulations to implement standards relating to Chloramphenicol in honey that are consistent with standards adopted by the FDA regarding Chloramphenicol in foods. All honey sold in Louisiana must meet the standards adopted by the commissioner, herein, prior to distribution and sale.

Chloramphenicol is a broad-spectrum antibiotic that has been restricted by the FDA for use in humans only in those cases where other antibiotics have not been successful. The FDA has set a zero tolerance level for Chloramphenicol in food and has prohibited the extra label use of Chloramphenicol in the United States in food producing animals, including bees (21 CFR 530.41).

Chloramphenicol is known to cause aplastic anemia, which adversely affects the ability of a person's bone marrow to produce red blood cells. Aplastic anemia can be fatal. In addition, according to the National Institute on Environmental and Health Sciences, Chloramphenicol can reasonably be anticipated to be a human carcinogen. In widely accepted references such as "Drugs in Pregnancy and

Lactation," the use of Chloramphenicol is strongly dissuaded during pregnancy, especially late pregnancy. Chloramphenicol can be transmitted to an unborn child through the placenta and to an infant through the mother's milk. The dosage transmitted to an unborn child is essentially the same dosage as is taken in by the mother. However, the unborn child is unable to metabolize Chloramphenicol as efficiently, thereby causing the risk of an increasing toxicity level in the unborn child. Although the effect on an infant as a result of nursing from a mother who has taken Chloramphenicol is unknown, it is known that such an infant will run the risk of bone marrow depression.

Recently, Canada, the United Kingdom, the European Union, and Japan have found Chloramphenicol in honey imported from China. The department has found Chloramphenicol in honey imported from Thailand. Preliminary test results from Canada indicate about 80 percent of the samples are positive for Chloramphenicol. The possibility exists that other countries may export Chloramphenicol-contaminated honey to the U.S.A., either by diversion of Chinese honey or their own use of Chloramphenicol.

The sale of such honey in Louisiana will expose Louisiana's citizens, including unborn children and nursing infants, to Chloramphenicol, a known health hazard. The sale, in Louisiana, of honey containing Chloramphenicol presents an imminent peril to the public's health, safety and welfare. This peril can cause consumers to quit buying honey from any source, including Louisiana honey. If consumers cease to buy, or substantially reduce, their purchases of Louisiana honey then Louisiana honey producers will be faced with substantial economic losses. Any economic losses suffered by Louisiana's honey producers will be especially severe in light of the current economic situation, thereby causing an imminent threat to the public welfare.

The Commissioner of Agriculture and Forestry has, therefore, determined that these Emergency Rules are necessary to immediately implement testing of honey for Chloramphenicol, to provide for the sale of honey and products containing honey that are not contaminated with Chloramphenicol. These Rules become effective upon signature and will remain in effect 120 days, unless renewed by the commissioner or until permanent rules are promulgated.

Title 7

AGRICULTURE AND ANIMALS

Part XXXV. Agro-Consumer Services

Chapter 1. Weights and Measures

§141. Chloramphenicol in Honey Prohibited; Testing and Sale of

A. Definitions

Food Producing Animals Both animals that are produced or used for food and animals, including bees, which produce material used as food.

Geographic Area A country, province, state, or territory or definable geographic region.

Honey Any honey, whether raw or processed.

B. No honey or food containing honey may be held, offered or exposed for sale, or sold in Louisiana if such honey or food containing honey contains Chloramphenicol.

C. No honey that is harvested from or produced, processed or packed in a geographic area, that the commissioner declares to be a location where Chloramphenicol is being used on or found in food producing animals, including bees, or in products from such animals, may be held, offered or exposed for sale, or sold in Louisiana without first meeting the requirements of Subsection E. No honey from any such geographic area may be used, as an ingredient in any food held, offered or exposed for sale, or sold in Louisiana without first meeting the requirements of Subsection E.

D. The commissioner may declare a geographic area to be a location where Chloramphenicol is being used on or found in food producing animals, including bees or in products from such animals, based upon information that would lead a reasonable person to believe that Chloramphenicol is being used on or found in food producing animals, or in products from such animals, in that geographic area.

1. Any such declaration shall be subject to promulgation in accordance with the provisions of the Administrative Procedure Act.

2. The commissioner may release any such geographic area from a previous declaration that Chloramphenicol is being used on food producing animals, including bees, in that location. Any such release shall be subject to promulgation in accordance with the Administrative Procedure Act.

E. Honey that comes from a geographic area declared by the commissioner to be a location where Chloramphenicol is being used on, or is found in food producing animals, including bees, or in products from such animals, must meet the following requirements for sampling, identification, sample preparation, testing and analysis before being held, offered or exposed for sale, or sold in Louisiana.

1. Sampling

a. The numbers of samples that shall be taken are as follows.

i. Two samples are to be taken of honey that is in lots of fifty pounds or less.

ii. Four samples are to be taken of honey that is in lots of fifty-one to one hundred pounds.

iii. Twelve samples are to be taken of honey that is in lots of one hundred and one pounds up to fifty tons.

b. For honey in bulk wholesale containers, each sample shall be at least one pound or twelve fluid ounces and must be pulled at random throughout each lot.

c. For packaged honey, each sample shall be at least eight ounces in size and shall be taken at random throughout each lot.

d. If the honey to be sampled consists of packages of honey grouped together, but labeled under two or more trade or brand names, then the honey packaged under each trade or brand name shall be sampled separately. If the honey to be sampled are not packaged, but are segregated in such a way as to constitute separate groupings, then each separate grouping shall be sampled separately.

e. A composite of the samples shall not be made. All samples shall be delivered to the lab. Each sample shall be clearly identifiable as belonging to a specific group of honey and shall be tested individually.

2. Each sample shall be identified as follows:

- a. any package label;
- b. any lot or batch numbers;
- c. the country, province and city of origin;
- d. the name and address of the importing company;
- e. unique sample number identifying the group or batch sample and subsample extension number for each subsample.

3. Sample Preparation

a. For small packages of honey up to and including eight ounces, use the entire sample. If honey sample includes more than one container, they shall be blended together. Divide the sample in half. Use half of the sample for the original analysis portion and retain the other half of the sample as a reserve.

4. Sample Analysis

a. Immunoassay test kits may be used if the manufacturer's published detection limit is one part per billion, (1 ppb) or less. Acceptable test kits include r-iopharm Ridascreen Chloramphenicol enzyme immunoassay kit and the Charm II Chloramphenicol kit. The commissioner may authorize other immunoassay kits with appropriate detection limits of 1 ppb or below to be used. Each sample must be run using the manufacturer's test method. The manufacturer's specified calibration curve must be run with each set. All results above 1 ppb must be assumed to be Chloramphenicol unless further testing by approved GC/LC method indicates the result to be an artifact.

b. HPLC-MS, GC-ECD, GC-MS methods currently approved by FDA, the United States Department of Agriculture or the Canadian Food Inspection Agency with detection limits of 1 ppb or below may also be used.

c. Other methods for sampling, identification, sample preparation, testing and analysis may be used if expressly approved in writing by the commissioner.

5. Any qualified laboratory may perform the testing and analysis of the samples unless it is located in a geographic area that the commissioner has declared to be a location where Chloramphenicol is being used on or found in food producing animals including bees, or in products from such animals. The commissioner shall resolve any questions about whether a laboratory is qualified to perform the testing and analysis.

6. The laboratory that tests and analyzes a sample or samples for Chloramphenicol shall certify the test results in writing.

7. A copy of the certified test results along with the written documentation necessary to show the methodology used for the sampling, identification, sample preparation, testing and analysis of each sample shall be sent to and actually received by the department prior to the honey or food containing honey being held for sale, offered or exposed for sale, or sold in Louisiana.

a. The test results and accompanying documentation must contain a test reference number.

b. The certified test results and the accompanying documentation must be in English and contain the name and address of the laboratory and the name and address of a person who may be contacted at the laboratory regarding the testing of the honey.

8. Upon the department's actual receipt of a copy of the certified test results and written documentation required

to accompany the certified test results, the honey or food containing honey may be held, offered or exposed for sale, or sold in Louisiana, unless a written stop-sale, hold or removal order is issued by the commissioner.

9. A copy of the test results, including the test reference number, shall either accompany every shipment of such honey or food containing honey, and be attached to the documentation submitted with every shipment sent to each location in Louisiana, or shall be immediately accessible to the department, upon request, from any such location.

F. Any person who is seeking to bring honey, or any food containing honey, that is required to be sampled and tested under this Section, into Louisiana, or who holds, offers or exposes for sale, or sells such honey or food containing honey in Louisiana shall be responsible for having the honey, sampled and tested in accordance with Subsection E. Any such person must, at all times, be in full and complete compliance with all the provisions of this Section.

G. The commissioner may reject the test results for any honey if the commissioner determines that the methodology used in sampling, identifying, sample preparation, testing or analyzing any sample is scientifically deficient so as to render the certified test results unreliable, or if such methodology was not utilized in accordance with, or does not otherwise meet the requirements of this Section.

H. If any certified test results are rejected by the commissioner then any person shipping or holding the honey or food containing honey will be notified immediately of such rejection and issued a stop-sale, hold or removal order by the commissioner. Thereafter, any such person shall abide by such order until the commissioner lifts the order in writing. Any such person may have the honey retested in accordance with this Section and apply for a lifting of the commissioner's order upon a showing that the provisions of this Section have been complied with and that the honey is certified as being free of Chloramphenicol.

I. The department may inspect any honey and any food containing honey, found in Louisiana, and take samples for testing.

J. A stop-sale, hold or removal order, including a prohibition on disposal, may be placed on any honey or any food containing honey that does not meet the requirements of this Section. Any such order shall remain in place until lifted, in writing, by the commissioner.

K. The department may take physical possession and control of any honey or any food containing honey that violate the requirements of this Section if the commissioner finds that the honey or food containing honey presents an imminent peril to the public health, safety and welfare and that issuance of a stop-sale, hold or removal order will not adequately protect the public health, safety and welfare.

L. The commissioner declares that he has information that would lead a reasonable person to believe that Chloramphenicol is being used on or found in food producing animals including bees, or in products from such animals, in certain geographic area(s).

1. The geographic area or areas are:
 - a. the country of the People's Republic of China;
 - b. the country of Thailand.
2. All honey harvested from or produced, processed or packed in any of the above listed geographic areas are

hereby declared to be subject to all the provisions of this Section, including sampling and testing provisions.

M. All records and information regarding the distribution, purchase and sale of honey or any food containing honey shall be maintained for two years and shall be open to inspection by the department.

N. Penalties for any violation of this Section shall be the same as and assessed in accordance with R. S. 3:4624.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2, 3:3, and 3:4608.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Office of the Commissioner, LR 31:

Bob Odom
Commissioner

0502#002

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry Office of Agro-Consumer Services Office of the Commissioner

Chloramphenicol in Shrimp and Crawfish Testing and Sale
(LAC 7:XXXV.137 and 139)

The Commissioner of Agriculture and Forestry hereby adopts the following Emergency Rules governing the testing and sale of shrimp and crawfish in Louisiana and the labeling of foreign shrimp and crawfish. These rules are being adopted in accordance with R.S. 3:2A, 3:3B, R.S. 3:4608 and the emergency rule provisions of R.S. 49:953 B of the Administrative Procedure Act.

The Louisiana Legislature, by SCR 13 of the 2002 Regular Session, has urged and requested that the Commissioner of Agriculture and Forestry require all shrimp and crawfish, prior to sale in Louisiana, meet standards relating to Chloramphenicol that are consistent with those standards promulgated by the United States Food and Drug Administration, (FDA). The legislature has also urged and requested the commissioner to promulgate rules and regulations necessary to implement the standards relating to Chloramphenicol in shrimp and crawfish that are consistent with those standards promulgated by the FDA, and which rules and regulations require all shrimp and crawfish sold in Louisiana to meet the standards adopted by the commissioner, prior to sale.

Chloramphenicol is an antibiotic the FDA has restricted for use in humans only in those cases where other antibiotics or medicines have not been successful. The FDA has banned the use of Chloramphenicol in animals raised for food production {see 21 CFR 522.390(3)}. The FDA has set a zero tolerance level for Chloramphenicol in food.

Chloramphenicol is known to cause aplastic anemia, which adversely affects the ability of a person's bone marrow to produce red blood cells. Aplastic anemia can be fatal. In addition, according to the National Institute on Environmental and Health Sciences, Chloramphenicol can reasonably be anticipated to be a human carcinogen. In widely accepted references such as "Drugs in Pregnancy and Lactation," the use of Chloramphenicol is strongly dissuaded during pregnancy, especially late pregnancy.

Chloramphenicol can be transmitted to an unborn child through the placenta and to an infant through the mother's milk. The dosage transmitted to an unborn child is essentially the same dosage as is taken in by the mother. However, the unborn child is unable to metabolize Chloramphenicol as efficiently, thereby causing the risk of an increasing toxicity level in the unborn child. Although the effect on an infant as a result of nursing from a mother who has taken Chloramphenicol is unknown, it is known that such an infant will run the risk of bone marrow depression.

Recently, European Union inspectors found Chloramphenicol residues in shrimp and crawfish harvested from and produced in China. The inspectors also found "serious deficiencies of the Chinese residue control system and problems related to the use of banned substances in the veterinary field," which may contribute to Chloramphenicol residues in Chinese shrimp and crawfish. The Chinese are known to use antibiotics, such as Chloramphenicol, in farm-raised shrimp. They are also known to process crawfish and shrimp harvested in the wild in the same plants used to process farm-raised shrimp.

The European Union, in January of this year, banned the import of shrimp and crawfish from China because Chloramphenicol has been found in shrimp and crawfish imported from China. Canada has, this year, banned the import of shrimp and crawfish that contain levels of Chloramphenicol above the level established by Canada. Between 1999 and 2000 imports of Chinese shrimp to the United States doubled, from 19,502,000 pounds to 40,130,000 pounds. With the recent bans imposed by the European Union and Canada there is an imminent danger that the shrimp and crawfish that China would normally export to the European Union and Canada will be dumped and sold in the United States, including Louisiana.

The sale of such shrimp and crawfish in Louisiana will expose Louisiana's citizens, including unborn children and nursing infants, to Chloramphenicol, a known health hazard. The sale, in Louisiana, of shrimp and crawfish containing Chloramphenicol presents an imminent peril to the public's health, safety and welfare.

This peril can cause consumers to quit buying shrimp and crawfish from any source, including Louisiana shrimp and crawfish. If consumers cease to buy, or substantially reduce, their purchases of Louisiana shrimp and seafood, Louisiana aquaculture and fisheries will be faced with substantial economic losses. Any economic losses suffered by Louisiana's aquaculture and fisheries will be especially severe in light of the current economic situation, thereby causing an imminent threat to the public welfare.

Consumers of shrimp and crawfish cannot make an informed decision as to what shrimp or crawfish to purchase and the commissioner cannot adequately enforce the regulations regarding the sampling and testing of shrimp and crawfish unless shrimp and crawfish produced in foreign countries are properly labeled as to the country of origin.

The Commissioner of Agriculture and Forestry has, therefore, determined that these Emergency Rules are necessary to immediately implement testing of shrimp and crawfish for Chloramphenicol, to provide for the sale of shrimp and crawfish that are not contaminated with Chloramphenicol and to provide for the labeling of shrimp and crawfish harvested from or produced, processed or

packed in countries other than the United States. These Rules become effective upon signature and will remain in effect 120 days, unless renewed by the commissioner or until permanent Rules are promulgated.

Title 7

AGRICULTURE AND ANIMALS

Part XXXV. Agro-Consumer Services

Chapter 1. Weights and Measures

§137. Chloramphenicol in Shrimp and Crawfish

Prohibited; Testing and Sale of

A. Definitions

Food Producing Animals Both animals that are produced or used for food and animals, such as dairy cows, that produce material used as food.

Geographic Area A country, province, state, or territory or definable geographic region.

Packaged Shrimp or Crawfish Any shrimp or crawfish, as defined herein, that is in a package, can, or other container, and which is intended to eventually be sold to the ultimate retail purchaser in the package, can or container.

Shrimp or Crawfish Any such animals, whether whole, de-headed, de-veined or peeled, and any product containing any shrimp or crawfish.

B. No shrimp or crawfish may be held, offered or exposed for sale, or sold in Louisiana if such shrimp or crawfish contain Chloramphenicol.

C. No shrimp or crawfish may be held, offered or exposed for sale, or sold in Louisiana without being accompanied by the following records and information, written in English.

1. The records and information required are:

- a. the quantity and species of shrimp and crawfish acquired or sold;
- b. the date the shrimp or crawfish was acquired or sold;
- c. the name and license number of the wholesale/retail seafood dealer or the out-of-state seller from whom the shrimp or crawfish was acquired or sold;
- d. the geographic area where the shrimp or crawfish were harvested;
- e. the geographic area where the shrimp or crawfish was produced processed or packed;
- f. the trade or brand name under which the shrimp or crawfish is held, offered or exposed for sale or sold; and
- g. the size of the packaging of the packaged shrimp or crawfish.

2. Any person maintaining records and information as required to be kept by the Louisiana Department of Wildlife & Fisheries in accordance with R.S. 56:306.5, may submit a copy of those records, along with any additional information requested herein, with the shrimp or crawfish.

3. Any shrimp or crawfish not accompanied by all of this information shall be subject to the issuance of a stop-sale, hold or removal order until the shrimp or crawfish is tested for and shown to be clear of Chloramphenicol, or the commissioner determines that the shrimp or crawfish does not come from a geographic area where Chloramphenicol is being used on or found in food producing animals, or in products from such animals.

D. No shrimp or crawfish that is harvested from or produced, processed or packed in a geographic area, that the commissioner declares to be a location where

Chloramphenicol is being used on or found in food producing animals, or in products from such animals, may be held, offered or exposed for sale, or sold in Louisiana without first meeting the requirements of Subsection F.

E. The commissioner may declare a geographic area to be a location where Chloramphenicol is being used on or found in food producing animals, or in products from such animals, based upon information that would lead a reasonable person to believe that Chloramphenicol is being used on or found in food producing animals, or in products from such animals, in that geographic area.

1. Any such declaration shall be subject to promulgation in accordance with the provisions of the Administrative Procedure Act.

2. The commissioner may release any such geographic area from a previous declaration that Chloramphenicol is being used on food producing animals in that location. Any such release shall be subject to promulgation in accordance with the Administrative Procedure Act.

F. Shrimp or crawfish, that comes from a geographic area declared by the commissioner to be a location where Chloramphenicol is being used on, or is found in food producing animals, or in products from such animals, must meet the following requirements for sampling, identification, sample preparation, testing and analysis before being held, offered or exposed for sale, or sold in Louisiana.

1. Sampling

a. The numbers of samples that shall be taken are as follows.

i. Two samples are to be taken of shrimp or crawfish that are in lots of fifty pounds or less.

ii. Four samples are to be taken of shrimp or crawfish that are in lots of fifty-one to one hundred pounds.

iii. Twelve samples are to be taken of shrimp or crawfish that are in lots of one hundred and one pounds up to fifty tons.

iv. Twelve samples for each fifty tons are to be taken of shrimp or crawfish that are in lots of over fifty tons.

b. For packaged shrimp or crawfish, each sample shall be at least eight ounces (226.79 grams) in size and shall be taken at random throughout each lot of shrimp or crawfish. For all other shrimp or crawfish, obtain approximately one pound (454 grams) of shrimp or crawfish per sample from randomly selected areas.

c. If the shrimp or crawfish to be sampled consists of packages of shrimp or crawfish grouped together, but labeled under two or more trade or brand names, then the shrimp or crawfish packaged under each trade or brand name shall be sampled separately. If the shrimp or crawfish to be sampled are not packaged, but are segregated in such a way as to constitute separate groupings, then each separate grouping shall be sampled separately.

d. A composite of the samples shall not be made. Each sample shall be tested individually. Each sample shall be clearly identifiable as belonging to a specific group of shrimp or crawfish. All samples shall be kept frozen and delivered to the lab.

2. Each sample shall be identified as follows:

- a. any package label;
- b. any lot or batch numbers;
- c. the country, province and city of origin;

- d. the name and address of the importing company;
- e. unique sample number identifying the group or batch sample and subsample extension number for each subsample.

3. Sample Preparation

a. For small packages of shrimp or crawfish up to and including one pound, use the entire sample. Shell the shrimp or crawfish, exercising care to exclude all shells from sample. Grind sample with food processor type blender while semi-frozen or with dry ice. Divide the sample in half. Use half of the sample for the original analysis portion and retain the other half of the sample in a freezer as a reserve.

4. Sample Analysis

a. Immunoassay test kits may be used if the manufacturer's published detection limit is one part per billion, (1 ppb) or less. Acceptable test kits include r-iopharm Ridascreen Chloramphenicol enzyme immunoassay kit and the Charm II Chloramphenicol kit. The commissioner may authorize other immunoassay kits with appropriate detection limits of 1 ppb or below to be used. Each sample must be run using the manufacturer's test method. The manufacturer's specified calibration curve must be run with each set. All results 1 ppb or above must be assumed to be Chloramphenicol unless further testing by approved GC/LC method indicates the result to be an artifact.

b. HPLC-MS, GC-ECD, GC-MS methods currently approved by FDA, the United States Department of Agriculture or the Canadian Food Inspection Agency with detection limits of 1 ppb or below may also be used.

c. Other methods for sampling, identification, sample preparation, testing and analysis may be used if expressly approved in writing by the commissioner.

5. Any qualified laboratory may perform the testing and analysis of the samples unless the laboratory is located in any geographic area that the commissioner has declared to be a location where Chloramphenicol is being used on or found in food producing animals, or in products from such animals. The commissioner shall resolve any questions about whether a laboratory is qualified to perform the testing and analysis.

6. The laboratory that tests and analyzes a sample or samples for Chloramphenicol shall certify the test results in writing.

7. A copy of the certified test results along with the written documentation necessary to show the methodology used for the sampling, identification, sample preparation, testing and analysis of each sample shall be sent to and actually received by the department prior to the shrimp or crawfish being held for sale, offered or exposed for sale, or sold in Louisiana.

a. The test results and accompanying documentation must contain a test reference number.

b. The certified test results and the accompanying documentation must be in English and contain the name and address of the laboratory and the name and address of a person who may be contacted at the laboratory regarding the testing of the shrimp or crawfish.

8. Upon actual receipt by the department of a copy of the certified test results and written documentation required to accompany the certified test results then the shrimp or crawfish may be held, offered or exposed for sale, or sold in

Louisiana, unless a written stop-sale, hold or removal order is issued by the commissioner.

9. A copy of the test results, including the test reference number, shall either accompany every shipment and be attached to the documentation submitted with every shipment of such shrimp or crawfish sent to each location in Louisiana or shall be immediately accessible to the department, upon request, from any such location.

G. Any person who is seeking to bring shrimp or crawfish that is required to be sampled and tested under this Section, into Louisiana, or who holds, offers or exposes for sale, or sells such shrimp or crawfish in Louisiana shall be responsible for having such shrimp or crawfish sampled and tested in accordance with Subsection F. Any such person must, at all times, be in full and complete compliance with all the provisions of this Section.

H. The commissioner may reject the test results for any shrimp or crawfish if the commissioner determines that the methodology used in sampling, identifying, sample preparation, testing or analyzing any sample is scientifically deficient so as to render the certified test results unreliable, or if such methodology was not utilized in accordance with, or does not otherwise meet the requirements of this Section.

I. In the event that any certified test results are rejected by the commissioner then any person shipping or holding the shrimp or crawfish will be notified immediately of such rejection and issued a stop-sale, hold or removal order by the commissioner. Thereafter, it will be the duty of any such person to abide by such order until the commissioner lifts the order in writing. Any such person may have the shrimp or crawfish retested in accordance with this Section and apply for a lifting of the commissioner's order upon a showing that the provisions of this Section have been complied with and that the shrimp or crawfish are certified as being free of Chloramphenicol.

J. The department may inspect, and take samples for testing, any shrimp or crawfish, of whatever origin, being held, offered or exposed for sale, or sold in Louisiana.

K. A stop-sale, hold or removal order, including a prohibition on disposal, may be placed on any shrimp or crawfish that does not meet the requirements of this Section. Any such order shall remain in place until lifted in writing by the commissioner.

L. The department may take physical possession and control of any shrimp or crawfish that violate the requirements of this Section if the commissioner finds that the shrimp or crawfish presents an imminent peril to the public health, safety and welfare and that issuance of a stop-sale, hold or removal order will not adequately protect the public health, safety and welfare.

M. The commissioner declares that he has information that would lead a reasonable person to believe that Chloramphenicol is being used on or found in food producing animals, or in products from such animals, in the following geographic area(s).

1. The geographic area or areas are:

a. the country of the People's Republic of China.

2. All shrimp and crawfish harvested from or produced, processed or packed in any of the above listed geographic areas are hereby declared to be subject to all the provisions of this Section, including sampling and testing provisions.

N. The records and information required under this Section shall be maintained for two years and shall be open to inspection by the department.

O. Penalties for any violation of this Section shall be the same as and assessed in accordance with R. S. 3:4624.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2, 3:3, and 3:4608.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Office of the Commissioner, LR 31:

§139. Labeling of Foreign Shrimp and Crawfish by Country of Origin

A. Definitions.

Foreign Shrimp or Crawfish Any shrimp or crawfish, as defined herein that is harvested from or produced, processed or packed in a country other than the United States.

Shrimp or Crawfish Any shrimp or crawfish, whether whole, de-headed, de-veined or peeled, and any product containing any shrimp or crawfish.

B. All foreign shrimp or crawfish, imported, shipped or brought into Louisiana shall indicate the country of origin, except as otherwise provided in this Section.

C. Every package or container that contains foreign shrimp or crawfish, shall be marked or labeled in a conspicuous place as legibly, indelibly, and permanently as the nature of the package or container will permit so as to indicate to the ultimate retail purchaser of the shrimp or crawfish the English name of the country of origin.

1. Legibility must be such that the ultimate retail purchaser in the United States is able to find the marking or label easily and read it without strain.

2. Indelibility must be such that the wording will not fade, wash off or otherwise be obliterated by moisture, cold or other adverse factors that such shrimp or crawfish are normally subjected to in storage and transportation.

3. Permanency must be such that, in any reasonably foreseeable circumstance, the marking or label shall remain on the container until it reaches the ultimate retail purchaser unless it is deliberately removed. The marking or label must be capable of surviving normal distribution and storing.

D. When foreign shrimp or crawfish are combined with domestic shrimp or crawfish, or products made from or containing domestic shrimp or crawfish, the marking or label on the container or package or the sign included with any display shall clearly show the country of origin of the foreign shrimp or crawfish.

E. In any case in which the words "United States," or "American," the letters "U.S.A.," any variation of such words or letters, or the name of any state, city or location in the United States, appear on any container or package containing foreign shrimp or crawfish, or any sign advertising such foreign shrimp or crawfish for sale, and those words, letters or names may mislead or deceive the ultimate retail purchaser as to the actual country of origin of the shrimp or crawfish, then the name of the country of origin preceded by "made in," "product of," or other words of similar meaning shall appear on the marking, label or sign. The wording indicating that the shrimp or crawfish is from a country other than the United States shall be placed in close proximity to the words, letters or name that indicates the shrimp or crawfish is a product of the United States in a legible, indelible and permanent manner. No provision of

this Section is intended to or is to be construed as authorizing the use of the words "United States," or "American," the letters "U.S.A.," any variation of such words or letters, or the name of any state, city or location in the United States, if such use is deceptive, misleading or prohibited by other federal or state law.

F. Foreign shrimp or crawfish shall not have to be marked or labeled with the country of origin if such shrimp or crawfish are included as components in a product manufactured in the United States and the shrimp or crawfish is substantially transformed in the manufacturing of the final product. But in no event shall thawing, freezing, packing, packaging, re-packing, re-packaging, adding water, de-heading, de-veining, peeling, partially cooking or combining with domestic shrimp or crawfish shall not be considered to be a substantial transformation.

G. The commissioner shall have all the powers granted to him by law, or in accordance with any cooperative endeavor with any other public agency, to enforce this Section, including the issuance of stop-sale, hold or removal orders and the seizing of shrimp or crawfish mislabeled or misbranded as to the country of origin.

H. Penalties for any violation of this Section shall be the same as and assessed in accordance with R. S. 3:4624.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2, 3:3, and 3:4608.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Office of the Commissioner, LR 31:

Bob Odom
Commissioner

0502#001

DECLARATION OF EMERGENCY
Department of Environmental Quality
Office of Environmental Assessment

Expedited Penalty Agreement
(LAC 33:I.801, 803, 805, and 807)(OS054E4)

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, which allow the Department of Environmental Quality to use emergency procedures to establish rules, and of R.S. 30:2011 and 2074, which allow the department to establish standards, guidelines, and criteria, to promulgate rules and regulations, and to issue compliance schedules, the secretary of the department hereby declares that an emergency action is necessary in order to implement expedited penalty agreements. Emergency Rule OS054E3, which was effective on January 7, 2005, and published in the *Louisiana Register* on January 20, 2005, is hereby rescinded. This Emergency Rule, OS054E4, retains the amendments in OS054E3 and adds two underground storage tank violations to LAC 33:I.807.

This Emergency Rule will abate the delay in correcting minor and moderate violations of the Environmental Quality Act. Delays in enforcement reduce the effectiveness of the action, utilize unnecessary resources, and slow down the enforcement process. In the past three years alone, the Enforcement Division has received 8,139 referrals and has

issued 4,259 actions. Currently strained budget and resource issues pose imminent impairment to addressing minor and moderate violations. This Rule will provide an alternative penalty assessment mechanism that the department may utilize, at its discretion, to expedite penalty agreements in appropriate cases. The report to the Governor by the Advisory Task Force on Funding and Efficiency of the Louisiana Department of Environmental Quality recommended this action as a pilot program. The legislature approved the report and passed Act 1196 in the 2003 Regular Session allowing the department to promulgate rules for the program. This Emergency Rule allows the operation of the pilot program to commence immediately, without the delay and inflexibility of a permanent rule. It will also allow the department to gather information to formulate a long-term rule and to evaluate the environmental and public health benefits and the social and economic costs of such a program in order to justify these requirements for the permanent Rule.

This Emergency Rule is effective on February 10, 2005, and shall remain in effect for a maximum of 120 days or until a final rule is promulgated, whichever occurs first. For more information concerning OS054E4 you may contact the Regulation Development Section at (225) 219-3550.

Title 33

ENVIRONMENTAL QUALITY

Part I. Office of the Secretary

Subpart 1. Departmental Administrative Procedures

Chapter 8. Expedited Penalty Agreement

§801. Definitions

Agency Interest Number **C**a site-specific number assigned to a facility by the department that identifies the facility in a distinct geographical location.

Qualifying Permit Parameter **C**for the purposes of these regulations: total organic carbon (TOC), chemical oxygen demand (COD), dissolved oxygen (DO), 5-day biochemical oxygen demand (BOD₅), 5-day carbonaceous biochemical oxygen demand (CBOD₅), total suspended solids (TSS), fecal coliform, and/or oil and grease.

Expedited Penalty Agreement **C**a predetermined penalty assessment issued by the department and agreed to by the respondent, which identifies violations of minor or moderate gravity as determined by LAC 33:I.705, caused or allowed by the respondent and occurring on specified dates, in accordance with R.S. 30:2025(D).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2025(D).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, LR 31:

§803. Purpose

A. The purpose of this Chapter is to provide an alternative penalty assessment mechanism that the department may utilize, at its discretion, to expedite penalty assessments in appropriate cases. This Chapter:

1. addresses common violations of minor or moderate gravity;
2. quantifies and assesses penalty amounts for common violations in a consistent, fair, and equitable manner;
3. ensures that the penalty amounts are appropriate, in consideration of the nine factors listed in R.S. 30:2025(E)(3)(a);

4. eliminates economic incentives for noncompliance for common minor and/or moderate violations; and

5. ensures expeditious compliance with environmental regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2025(D).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, LR 31:

§805. Applicability

A. Limit of Penalty Amount. The total penalty assessed for the expedited penalty agreement shall not exceed \$1,500 for one violation or \$3,000 for two or more violations per penalty assessed.

B. Departmental Discretion. The secretary of the department or his designee, at his sole discretion, may propose an expedited penalty agreement for any violation described in LAC 33:I.807.A and considered in accordance with Subsection E of this Section. The expedited penalty agreement shall specify that the respondent waives any right to an adjudicatory hearing or judicial review regarding violations identified in the signed expedited penalty agreement. The respondent must concur with and sign the expedited penalty agreement in order to be governed by this Chapter and R.S. 30:2025(D).

C. Notification to the Respondent. The expedited penalty agreement shall serve as notification to the respondent of the assessed penalty amount for the violations identified on the specified dates.

D. Certification by the Respondent. By signing the expedited penalty agreement, the respondent certifies that all cited violations in the expedited penalty agreement have been or will be corrected, and that the assessed penalty amount has been or will be paid, within 30 days of receipt of the expedited penalty agreement.

E. Nine Factors for Consideration. An expedited penalty agreement may be used only when the following criteria for the nine factors for consideration are satisfied.

1. The History of Previous Violations or Repeated Noncompliance. The violation identified in the expedited penalty agreement is not the same as or similar to a violation identified in any compliance order, penalty assessment, settlement agreement, or expedited penalty agreement issued by the department within the previous two years for any particular agency interest number. Site-specific enforcement history considerations will only apply to expedited penalty agreements.

2. The Nature and Gravity of the Violation. The violation identified is considered to be minor or moderate with regard to its nature and gravity.

a. The violation identified in the expedited penalty agreement deviates somewhat from the requirements of statutes, regulations, or permit; however, the violation exhibits at least substantial implementation of the requirements.

b. The violation identified is isolated in occurrence and limited in duration.

c. The violation is easily identifiable and corrected.

d. The respondent concurs with the violation identified and agrees to correct the violation identified and any damages caused or allowed by the identified violation

within 30 days of receipt of the expedited penalty agreement.

3. The Gross Revenues Generated by the Respondent. By signing the expedited penalty agreement, the respondent agrees that sufficient gross revenues exist to pay the assessed penalty and correct the violation identified in the expedited penalty agreement within 30 days of receipt of the expedited penalty agreement.

4. The Degree of Culpability, Recalcitrance, Defiance, or Indifference to Regulations or Orders. The respondent is culpable for the violation identified, but has not shown recalcitrance, defiance, or extreme indifference to regulations or orders. Willingness to sign an expedited penalty agreement and correct the identified violation within the specified timeframe demonstrates respect for the regulations and a willingness to comply.

5. The Monetary Benefits Realized Through Noncompliance. The respondent's monetary benefit from noncompliance for the violation identified shall be considered. The intent of these regulations is to eliminate economic incentives for noncompliance.

6. The Degree of Risk to Human Health or Property Caused by the Violation. The violation identified does not present actual harm or substantial risk of harm to the environment or public health. The violation identified is isolated in occurrence or administrative in nature, and the violation identified has no measurable detrimental effect on the environment or public health.

7. Whether the Noncompliance or Violation and the Surrounding Circumstances Were Immediately Reported to the Department and Whether the Violation or Noncompliance Was Concealed or There Was an Attempt to Conceal by the Person Charged. Depending upon the type of violation, failure to report may or may not be applicable to this factor. If the respondent concealed or attempted to conceal any violation, the violation shall not qualify for consideration under these regulations.

8. Whether the Person Charged Has Failed to Mitigate or to Make a Reasonable Attempt to Mitigate the Damages Caused by the Noncompliance or Violation. By signing the expedited penalty agreement, the respondent states that the violation identified and the resulting damages, if any, have been or will be corrected. Violations considered for expedited penalty agreements are, by nature, easily identified and corrected. Damages caused by any violation identified are expected to be nonexistent or minimal.

9. The Costs Of Bringing and Prosecuting an Enforcement Action, Such as Staff Time, Equipment Use, Hearing Records, and Expert Assistance. Enforcement costs for the expedited penalty agreement are considered minimal. Enforcement costs for individual violations are covered with the penalty amount set forth for each violation in LAC 33:I.807.

F. Schedule. The respondent must return the signed expedited penalty agreement and payment for the assessed amount to the department within 30 days of the respondent's receipt of the expedited penalty agreement. If the department has not received the signed expedited penalty agreement and payment for the assessed amount by the close of business on the thirtieth day after the respondent's receipt of the

expedited penalty agreement, the expedited penalty agreement may be withdrawn at the department's discretion.

G. Extensions. If the department determines that compliance with the cited violation is technically infeasible or impracticable within the initial 30-day period for compliance, the department, at its discretion, may grant one 30-day extension in order for the respondent to correct the violation cited in the expedited penalty agreement

H. Additional Rights of the Department

1. If the respondent signs the expedited penalty agreement, but fails to correct the violation identified, pay the assessed amount, or correct any damages caused or allowed by the cited violation within the specified timeframe, the department may issue additional enforcement actions including, but not limited to, a civil penalty assessment and may take any other action authorized by law to enforce the terms of the expedited penalty agreement.

2. If the respondent does not agree to and sign the expedited penalty agreement, the department may notify the respondent that a formal civil penalty is under consideration. The department may then pursue formal enforcement action against the respondent in accordance with R.S. 30:2025(C), 2025(E), 2050.2, and 2050.3.

I. Required Documentation. The department shall not propose any expedited penalty agreement without an affidavit, inspection report, or other documentation to establish that the respondent has caused or allowed the violation to occur on the specified dates.

J. Evidentiary Requirements. Any expedited penalty agreement issued by the department shall notify the respondent of the evidence used to establish that the respondent has caused or allowed the violation to occur on the specified dates.

K. Public Enforcement List. The signed expedited penalty agreement is a final enforcement action of the department and shall be included on the public list of enforcement actions referenced in R.S. 30:2050.1(B)(1).

L. Date of Issuance. When an expedited penalty agreement is issued in conjunction with a Notice of Potential Penalty, the following issuance dates shall apply.

1. If the respondent does not wish to participate in the expedited penalty agreement program, the issuance date for the Notice of Potential Penalty portion of the document shall be 30 days after the respondent receives the document.

2. If the respondent does wish to participate in the expedited penalty agreement program, the issuance date for the expedited penalty agreement portion of the document shall be the date the administrative authority signs the document for the second, and final, time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2025(D).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, LR 31:

§807. Types of Violations and Expedited Penalty Amounts

A. The types of violations listed in the following table may qualify for coverage under this Chapter; however, any violation listed below, which is identified in an expedited penalty agreement, must also meet the conditions set forth in LAC 33:I.805.E.

Expedited Penalties			
Violation	Citation	Amount	Frequency
ALL MEDIA			
Failure to provide timely notification for the unauthorized discharge of any material that exceeds the reportable quantity but does not cause an emergency condition	LAC 33:I.3917.A	\$300	per day
Failure to provide timely written notification for the unauthorized discharge of any material that exceeds the reportable quantity but does not cause an emergency condition	LAC 33:I.3925.A	\$300	per day
AIR QUALITY			
40 CFR Part 70 General Permit conditions (Part K, L, M, or R): Failure to timely submit any applicable annual, semiannual, or quarterly reports	LAC 33:III.501.C.4	\$500	per occurrence
Failure to submit an Annual Criteria Pollutant Emissions Inventory in a timely and complete manner when applicable	LAC 33:III.919	\$500	per occurrence
Failure to submit an Annual Toxic Emissions Data Inventory in a timely and complete manner when applicable	LAC 33:III.5107	\$500	per occurrence
Control of Fugitive Emissions, sandblasting facilities: Failure to take all reasonable precautions to prevent particulate matter from becoming airborne	LAC 33:III.1305.A	\$250	per occurrence
Failure to provide notice of change of ownership within 90 days after the change	LAC 33:III.517.G	\$200	per occurrence
Failure to timely submit any applicable Specific Condition or General Condition report as specified in a minor source permit	LAC 33:III.501.C.4	\$250	per occurrence
Failure to timely submit any applicable Specific Condition or General Condition report (other than those specified elsewhere in this Section) as specified in a Part 70 (Title V) air permit	LAC 33:III.501.C.4	\$500	per occurrence
Failure to submit an updated Emission Point List, Emissions Inventory Questionnaire (EIQ), emissions calculations, and certification statement as described in LAC 33:III.517.B.1 within seven calendar days after effecting any modification to a facility authorized to operate under a standard oil and gas permit	LAC 33:III.501.C.4	\$750	per occurrence/ emission point

Expedited Penalties			
Violation	Citation	Amount	Frequency
Failure to submit the Title V permit renewal application at least six months prior to the date of expiration, applicable only when the renewal application is submitted prior to permit expiration and a renewal permit is issued on or before the expiration date	LAC 33:III.507.E.4	\$1,000	per occurrence
Failure to maintain records for glycol dehydrators subject to LAC 33:III.2116	LAC 33:III.2116.F	\$250	per occurrence
Failure to submit an initial perchloroethylene inventory report	LAC 33:III.5307.A	\$250	per occurrence
Failure to submit perchloroethylene usage reports by July 1 for the preceding calendar year	LAC 33:III.5307.B	\$250	per occurrence
Stage II Vapor Recovery			
Note: LAC 33:III.2132 is only applicable to subject gasoline dispensing facilities in the parishes of Ascension, East Baton Rouge, West Baton Rouge, Iberville, Livingston, and Pointe Coupee.			
Failure to have at least one person trained as required by the regulations	LAC 33:III.2132.C	\$300	per occurrence
Failure to test the vapor recovery system prior to start-up of the facility and annually thereafter	LAC 33:III.2132.D	\$500	per occurrence
Failure to post operating instructions on each pump	LAC 33:III.2132.E	\$100	per occurrence
Failure to maintain equipment as defined in LAC 33:III.2132.F.1-2	LAC 33:III.2132.F.1-2	\$300	per occurrence
Failure to tag defective equipment "out of order"	LAC 33:III.2132.F.3	\$500	per occurrence
Failure to maintain records on-site for at least two years and present them to an authorized representative upon request	LAC 33:III.2132.G.1-7	\$300	per compliance inspection
Failure to use and/or diligently maintain, in proper working order, all air pollution control equipment installed at the site	LAC 33:III.905	\$100	per occurrence
HAZARDOUS WASTE			
Used Oil			
Failure of a used oil generator to stop, contain, clean up, and/or manage a release of used oil, and/or repair or replace leaking used oil containers or tanks prior to returning them to service	LAC 33:V.4013.E	\$500	per occurrence
Failure of a used oil transfer facility to stop, contain, clean up, and/or manage a release of used oil, and/or repair or replace leaking used oil containers or tanks prior to returning them to service	LAC 33:V.4035.H	\$500	per occurrence

Expedited Penalties			
Violation	Citation	Amount	Frequency
Failure of a used oil processor or re-refiner to stop, contain, clean up, and/or manage a release of used oil, and/or repair or replace leaking used oil containers or tanks prior to returning them to service	LAC 33:V.4049.G	\$500	per occurrence
Failure of a used oil burner to stop, contain, clean up, and/or manage a release of used oil, and/or repair or replace leaking used oil containers or tanks prior to returning them to service	LAC 33:V.4069.G	\$500	per occurrence
SOLID WASTE			
Waste Tires			
Storage of more than 20 whole tires without authorization from the administrative authority	LAC 33:VII.10509.B	\$200	per occurrence
Transporting more than 20 tires without first obtaining a transporter authorization certificate	LAC 33:VII.10509.C	\$200	per occurrence
Storing tires for greater than 365 days	LAC 33:VII.10509.E	\$200	per occurrence
Failure to maintain all required records for three years on-site or at an alternative site approved in writing by the administrative authority	LAC 33:VII.10509.G	\$200	per occurrence
Failure to obtain a waste tire generator identification number within 30 days of commencing business operations	LAC 33:VII.10519.A	\$300	per occurrence
Failure to accept one waste tire for every new tire sold unless the purchaser chooses to keep the waste tire	LAC 33:VII.10519.B	\$100	per occurrence
Failure to remit waste tire fees to the state on a monthly basis as specified	LAC 33:VII.10519.D	\$100	per occurrence
Failure to post required notifications to the public	LAC 33:VII.10519.E	\$100	per occurrence
Failure to list the waste tire fee on a separate line on the invoice so that no tax will be charged on the fee	LAC 33:VII.10519.F	\$100	per occurrence
Failure to keep waste tires or waste tire material covered as specified	LAC 33:VII.10519.H	\$200	per occurrence
Failure to segregate waste tires from new or used tires offered for sale	LAC 33:VII.10519.M	\$200	per occurrence
Failure to provide a manifest for all waste tire shipments containing more than 20 tires	LAC 33:VII.10533.A	\$200	per occurrence
Failure to maintain completed manifests for three years and have them available for inspection	LAC 33:VII.10533.D	\$200	per occurrence
Failure to collect appropriate waste tire fee for each new tire sold	LAC 33:VII.10519.C, 10535.B	\$200	per occurrence

Expedited Penalties			
Violation	Citation	Amount	Frequency
WATER QUALITY			
Failure to properly operate and maintain a facility:			
1. Failing to provide disinfection at any applicable sewage treatment plant	LAC 33:IX.2701.E	\$200	per occurrence
2. Failing to operate/maintain backup or auxiliary systems within a treatment system	LAC 33:IX.2701.E	\$200	per occurrence
3. Failing to implement adequate laboratory controls and quality assurance procedures	LAC 33:IX.2701.E	\$200	per occurrence
4. Allowing excessive solids to accumulate within a treatment system	LAC 33:IX.2701.E	\$200	per occurrence
5. Allowing sample holding times to expire before analyzing any sample and failing to follow approved methods when collecting and analyzing samples	LAC 33:IX.2701.J.4	\$200	per occurrence
Failure to sample any permit parameter in accordance with an LPDES permit	LAC 33:IX.2701.A	\$100	per permit parameter
Failure to submit Discharge Monitoring Reports (DMRs):			
1. Failing to submit DMRs, for any outfall, required by any LPDES individual permit	LAC 33:IX.2701.L.4.a	\$200	per submittal (per outfall)
2. Failing to submit DMRs, for any outfall, required by any LPDES general permit	LAC 33:IX.2701.L.4.a	\$100	per submittal (per outfall)
Exceedance of LPDES permit effluent limitations:			
1. Exceeding the daily maximum or weekly average concentration permit limit for any qualifying permit parameter	LAC 33:IX.2701.A	\$150	per permit parameter (per exceedance)
2. Exceeding a monthly average concentration permit limit for any qualifying permit parameter	LAC 33:IX.2701.A	\$300	per permit parameter (per exceedance)
3. Exceeding a daily maximum or weekly average mass loading permit limit for any qualifying permit parameter	LAC 33:IX.2701.A	\$200	per permit parameter (per exceedance)
4. Exceeding a monthly average mass loading permit limit for any qualifying permit parameter	LAC 33:IX.2701.A	\$400	per permit parameter (per exceedance)
5. Discharging effluent outside of the permitted range for pH (grab samples only)	LAC 33:IX.2701.A	\$150	per grab sample (per exceedance)

Expedited Penalties			
Violation	Citation	Amount	Frequency
Failure to develop and/or implement a Spill Prevention and Control Plan (SPC):			
1. Failing to develop an SPC plan for any applicable facility	LAC 33:IX.905	\$500	per occurrence
2. Failing to implement any component of an SPC plan	LAC 33:IX.905	\$100	per occurrence
Failure to submit certain reports as required by an LPDES permit, including storm water reports, pretreatment reports, biomonitoring reports, overflow reports, construction schedule progress reports, environmental audit reports as required by a municipal pollution prevention plan, and toxicity reduction evaluation reports	LAC 33:IX.2701.A	\$300	per required submittal
Failure to prepare and/or implement any portion or portions of a Storm Water Pollution Plan (SWPPP), Pollution Prevention Plan (PPP), or Best Management Practices/Plan (BMP) as required by an LPDES permit	LAC 33:IX.2701.A	\$500	per occurrence
Failure to submit a Notice of Intent for coverage under the LPDES Storm Water Permit for Construction Activities or under the LPDES Storm Water Multi-Sector General Permit	LAC 33:IX.2511.C.1	\$1,000	per occurrence
Failure to provide notification of facility changes as required by an LPDES permit	LAC 33:IX.2701.L.1	\$300	per occurrence
Failure to submit a noncompliance report required by an LPDES individual permit	LAC 33:IX.2701.L.7	\$200	per occurrence
Failure to submit a noncompliance report required by an LPDES general permit	LAC 33:IX.2701.L.7	\$100	per occurrence
Unauthorized discharge of oil field wastes, including produced water	LAC 33:IX.1901.A	\$1,000	per occurrence
Unauthorized discharge of oily fluids	LAC 33:IX.1701.B	\$1,000	per occurrence
UNDERGROUND STORAGE TANKS			
Failure to register existing or new USTs containing regulated substances	LAC 33:XI.301.A-B	\$300	per occurrence
Failure to certify and provide required information on the department's approved registration form	LAC 33:XI.301.B.1-2	\$300	per occurrence

Expedited Penalties			
Violation	Citation	Amount	Frequency
Failure to notify the Office of Environmental Services, Permits Division within 30 days after selling a UST system or acquiring a UST system; failure to keep a current copy of the registration form on-site or at the nearest staffed facility	LAC 33:XI.301.C.1-3	\$300	per occurrence
Failure to provide corrosion protection to tanks and/or piping that routinely contain regulated substances using one of the specified methods	LAC 33:XI.303.A.1-2	\$500	per occurrence
Failure to provide spill and/or overflow prevention equipment as specified	LAC 33:XI.303.A.3 and/or B.4	\$300	per occurrence
Failure to upgrade existing UST systems to new system standards as specified	LAC 33:XI.303.B	\$300	per occurrence
Failure to pay fees by the required date	LAC 33:XI.307.D	\$200	per occurrence
Failure to report, investigate, and/or clean up any spills and overfills	LAC 33:XI.501.B	\$1,500	per occurrence
Failure to continuously operate and maintain corrosion protection to the metal components of portions of the tank and piping that routinely contain regulated substances and are in contact with the ground	LAC 33:XI.503.A	\$300	per occurrence
Failure to have UST systems equipped with cathodic protection systems inspected for proper operation as specified	LAC 33:XI.503.B	\$500	per occurrence
Failure to inspect UST systems with impressed current cathodic protection systems every 60 days to ensure that the equipment is running properly	LAC 33:XI.503.C	\$300	per occurrence
Failure to comply with recordkeeping requirements	LAC 33:XI.503.D	\$150	per occurrence
Failure to meet requirements for repairs to UST systems	LAC 33:XI.507	\$300	per occurrence
Failure to follow reporting requirements, maintain required information, and/or keep records at the UST site and make them immediately available or keep them at an alternative site and provide them within 24 hours after a request	LAC 33:XI.509	\$300	per occurrence
Failure to meet the performance requirements when performing release detection required in LAC 33:XI.703	LAC 33:XI.701	\$750 and completion of a department-sponsored compliance class	per occurrence

Expedited Penalties			
Violation	Citation	Amount	Frequency
Failure to use a method or combination of methods of release detection described in LAC 33:XI.701 for all new or existing tank systems and/or failure to notify the Office of Environmental Compliance when a leak detection method indicates that a release may have occurred	LAC 33:XI.703.A.1-2	\$1,500 and completion of a department-sponsored compliance class	per occurrence
Failure to satisfy the additional requirements for petroleum UST systems as specified	LAC 33:XI.703.B	\$100	per occurrence
Failure to maintain release detection records	LAC 33:XI.705	\$150	per occurrence
Failure to report any suspected release to the Office of Environmental Compliance within 24 hours after becoming aware of the occurrence	LAC 33:XI.707	\$500	per occurrence
Failure to maintain corrosion protection and/or release detection on a UST system that is temporarily closed and contains more than 2.5 cm (1 inch) of residue, or 0.3 percent by weight of the total capacity of the UST system.	LAC 33:XI.903.A	\$500 and completion of a department-sponsored compliance class	per occurrence

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2025(D).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, LR 31:

Mike D. McDaniel, Ph.D.
Secretary

0502#056

DECLARATION OF EMERGENCY

Office of the Governor Boxing and Wrestling Commission

Boxing and Wrestling Emergency
Medical Technician Requirement
(LAC 46:XI.101 and 115)

The Louisiana State Boxing and Wrestling Commission does hereby exercise the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and 49:967(D), and adopts the following Rule. This Emergency Rule is necessary to promote the safety and welfare of those in the professions governed by this commission. This Emergency Rule provides for the availability of an ambulance and duly licensed EMT with resuscitation equipment during bouts.

This Emergency Rule is effective January 14, 2005, and is to remain effective for a period of 120 days or until adoption of the final Rule, whichever occurs first.

Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS

Part XI. Boxing and Wrestling

Chapter 1. General Rules

§101. Definitions

* * *

Emergency Medical Technician (EMT) **Ca** duly registered and state certified emergency medical services professional pursuant to LAC 46:XXXVIII.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:64.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), amended by the Office of the Governor, Boxing and Wrestling Commission, LR 31:

§115. Medical Equipment Required

A. There shall be an ambulance no further than 300 feet from the ring and duly licensed EMT's or paramedics with appropriate resuscitation equipment no further than 100 feet away from the ring at all times.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Boxing and Wrestling Commission, LR 31:

Anthony L. Embanato, Jr.
Chairman

0502#008

DECLARATION OF EMERGENCY

Office of the Governor
Boxing and Wrestling Commission

Boxing and Wrestling Standards
(LAC 46:XI.Chapters 1, 3 and 5)

The Louisiana State Boxing and Wrestling Commission does hereby exercise the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and 49:967(D), and adopts the following Rule. This Emergency Rule is necessary to prevent the lost of tax revenues resulting from locations rebroadcasting television related events and wrestling promoters/producers scheduling of events and to promote the safety and welfare of commission and ring officials and to move rules to show correct placement, repeal rules which are not in effect and to join with all sanctioning bodies that have now adopted the *Uniform Rules of Boxing* for championship bouts.

This Emergency Rule is being promulgated to continue the provisions contained in the December 9, 2004 Emergency Rule (*Louisiana Register*, Volume 30, Number 12). This Emergency Rule is effective starting February 11, 2005, for a period of 120 days or until adoption of the final Rule, whichever occurs first.

Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS

Part XI. Boxing and Wrestling

Chapter 1. General Rules

§101. Definitions

* * *

Exhibition **Ca** boxing, kickboxing or martial arts engagement in which the boxers, kickboxers or martial arts contestants show or display their skill without necessarily striving to win. This definition excludes wrestling, pursuant to R.S. 4:75 and 76.

* * *

Physician **Ca** a person possessing a doctor of medicine (allopathic/M.D.), doctor of osteopathy or doctor of osteopathic medicine degree (osteopathic/D.O.) or an equivalent degree duly awarded by a medical or osteopathic educational institution approved by the commission.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:64.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), amended by the Office of the Governor, Boxing and Wrestling Commission, LR 31:

§102. Annual License Fees

A. The following is a scale of fees for licensees.

1. Promoters	\$500
2. Matchmakers	\$500
3. Referees	\$ 25
4. Managers	\$ 25
5. Announcers	\$ 25
6. Professional boxers	\$ 25
7. Seconds	\$ 25
8. Professional wrestling contestants	\$ 25
9. Event coordinator	\$500
10. Other licenses	\$ 25

B. ...

AUTHORITY NOTE: Adopted in accordance with R.S. 4:65(B).

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), amended by the Office of the Governor, Boxing and Wrestling Commission, LR 31:

§117. Permit

A. No contracts will be recognized or considered valid unless filed with the commission and until a permit is issued for the event by the commission. A permit fee of \$250 for a non-television show and a permit fee of \$2,000 for a television show may be required by the commission.

AUTHORITY NOTE: Adopted in accordance with R.S. 4:61(D) and R.S. 4:64.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), amended by the Office of the Governor, Boxing and Wrestling Commission, LR 31:

§119. Deposits: Closed Circuit and Pay-Per-View Television Rebroadcasting

A. All locations rebroadcasting television related events, may be required to deposit a maximum of \$1,000, in advance for expenses and taxes. *Location* in this particular rule meaning any casino, public auditorium, hotel or civic center. Money, less taxes and expenses, will be refunded by the commission to producer if taxes collected do not equal amount deposited. If taxes exceed the deposit, then the commission will proceed with collecting taxes as outlined in Revised Statute 4:67. Sports bars with a 250 person capacity

or less will be required to purchase a permit for \$100; sports bars with a 400 person capacity or less will be required to purchase a permit for \$200; over 400 person capacity a promoters license is required. If sports bars are part of a location, as defined in this rule, then the same rule will apply as a location. Five percent taxes will apply as indicated in Revised Statute 4:67. Complimentary passes or tickets are taxable if ticket prices are outlined in the television contract or advertised and sold at a specified price. The capacity of a location will be determined by the state/local fire marshal's office. Locations are required to obtain a promoters license from the commission; sports bars with a capacity of less than 400 are exempt from purchasing a promoters license.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Boxing and Wrestling Commission, LR 31:

§121. Hold Harmless and Indemnity Agreement

A. All individuals, except the members of the commission, acting in any official capacity for any event(s) sanctioned by the commission shall be required to execute the Hold Harmless and Indemnity Agreement of the commission, prior to receiving any assignment from the commission. This shall be in addition to the agreement as set forth in the license application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61.D, R.S. 4:64 and R.S. 4:79.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Boxing and Wrestling Commission, LR 31:

§123. Ringside Physicians

A. The ringside physicians shall be stationed at places designated by the commission.

B. The ringside physician may terminate any contest or exhibition at any time if in the opinion of such physician the health or well-being of any participant would be significantly jeopardized by continuation of the contest or exhibition. In the event of any serious physical injury, such physician shall immediately render any emergency treatment necessary, recommended further treatment or hospitalization if required, and fully report the entire matter to the commission within 24 hours, and thereafter, as required by the commission. Such physician may also require that the injured participant and his or her manager remain in the ring or on the premises or report to a hospital after the contest for such period of time as such physician deems advisable.

C. Any contrary provisions of these rules notwithstanding, the ringside physician may enter the ring during the progress of a bout at any time to fulfill his or her official duties. A ringside physician desiring to enter the ring for this purpose shall first signal the referee of his or her intention, upon which the referee shall stop the progress of the bout by signaling the timekeeper. At any time during the progress of a bout, the referee may stop the progress of the bout by signaling the timekeeper, and require the ringside physician to enter the ring to examine a participant. Nothing herein shall be deemed to prohibit the ringside physician from entering the ring to examine any contestant during the rest periods, with or without invitation from the referee.

AUTHORITY NOTE: Adopted in accordance with R.S. 4:61(D), R.S. 4:64 and R.S. 4:70.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996),

repromulgated by the Office of the Governor, Boxing and Wrestling Commission, LR 31:

§125. Event Approval

A. A member of the Louisiana Boxing and Wrestling Commission, including the chairman, may not legally and/or officially authorize and/or give approval to any television network, corporation, limited liability company, promoter, match-maker or any other entity, private or corporate, for any major event date and site selection, without the prior approval of a majority of the commission members voting in favor. *Major Event* in this rule means any boxing, kick-boxing or wrestling (WCW, WWF, etc.) contests that the state of Louisiana authorizes this commission to sanction. Minor local wrestling shows may be excluded from this rule. (Local area commissioners should coordinate these shows through the deputy commissioners and chairman, once they are made aware of such events.)

B. Once a commissioner is contacted by a promoter, he must advise the promoter that a typewritten request on official letterhead must be submitted to the chairman by mail or facsimile. In the request disclosure must be made regarding the venue (television contracts, promoter, matchmaker, number of bouts, bout contracts, arena contracts, sanctioning bodies, ticket information, etc.) After date and site selection is approved, full disclosure of all venue information must be submitted no later than two weeks prior to the event.

C. Once an official request is made, the chairman must call a meeting to approve or reject the request. A quorum, according to state statute, must be present to approve or reject such requests. An emergency meeting will not be necessary, if the time table is such, that the request may be discussed at the regular scheduled commission meeting.

D. The commission may demand that all monies relative to boxing venues be placed in escrow in the commission treasury. Monies in this rule means fighters purses and ring officials (referees, timekeepers, inspectors, physicians, judges, etc.) expenses. All ring officials pay will be predetermined and coordinated through the commission with the promoter. The ring officials will be paid by commission checks the same day or night before the start of the first bout. If the commission required fighters' purses to be placed in escrow then the fighters also will be paid by commission checks, less any expenses due the commission.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Boxing and Wrestling Commission, LR 31:

§127. Charity Events

A. Permission to hold charity events must be obtained from the commission.

1. If expenses for the event are to be deducted from the proceeds, then a report estimating the expenses to be incurred shall be presented to the commission 21 days prior to the event for approval. The report shall contain an expense limit to be incurred for the event.

2. A final report showing the actual expenses incurred along with the amount of donated proceeds must be submitted to the commission no later than 7 days after the event.

3. A receipt from the charitable organization must be included in the final report to the commission.

B. Shows advertised as charity events must announce in advance in the public press what contribution will be for charity and for what particular charity and this money must be paid before other expenses are deducted.

C. Should the entire proceeds, (except actual expenses) be given to charity, then this fact must be published. A complete report of all expenses and the actual amount turned over to charity must be available for the press on the day following the exhibition.

AUTHORITY NOTE: Adopted in accordance with R.S. 4:61(D) and R.S. 4:64.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), amended by the Office of the Governor, Boxing and Wrestling Commission, LR 31:

§129. Tickets and Sale of Tickets

A. All tickets shall have a number, price and date printed or stamped plainly on the face of the ticket as well as the stub retained by the ticket holder. Any ticket sold or deposited in the ticket box that is not printed or stamped plainly with a price on the face of the ticket will be counted, for tax purposes, at a value or price of the highest price ticket sold for the event.

B. Tickets of different prices shall be printed or stamped on heavy paper of different colors. Use of passout tickets is prohibited unless the club receives written permission from the commission to use them.

C. Under no circumstances shall a ticket holder be passed through the gate without having the ticket separated from the stub, or be allowed to occupy a seat unless in possession of the ticket stub. The ticket taker at the door shall separate the ticket from the stub and deposit the ticket in the sealed box provided by the commission or the commission representative.

D. The commission or the commission representative shall check numbers and places of ticket boxes at the gates and cause them to be sealed and after the event, have them opened and tickets counted under his supervision.

E. The commission may approve the use of roll tickets. No advance sale of roll tickets shall be permitted. Each roll must be numbered and priced according to the color of the roll. The commission or representative of the commission must be informed of the price of the tickets before they can be sold. The starting ticket number of each roll must be recorded by the commission or the commission representative.

F. Promoters shall provide complimentary tickets or official passes to the commission for attendance of commissioners and commission staff to efficiently conduct commission business for the presentation of a good show. If necessary 30 complimentary tickets or passes will be provided.

AUTHORITY NOTE: Adopted in accordance with R.S. 4:61(D), R.S. 4:64 and R.S. 4:73.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), repromulgated by the Office of the Governor, Boxing and Wrestling Commission, LR 31:

§131. Penalties and Sanctions

A. Anyone licensed and/or subject to the authority of the commission, who violates any of the rules and regulations of the commission as set forth in title, parts and chapters, shall be subject to such sanctions as imposed by the commission which may result in fines, suspensions and revocations of licenses to be determined by the commission pursuant to the laws of the state of Louisiana and the authority of the commission vested to the commission by those laws.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61.D, R.S. 4:64 and R.S. 4:82.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Boxing and Wrestling Commission, LR 31:

§133. Unauthorized Matchmakers, Promoters, Managers

A. Anyone under the authority of the commission who deals with undercover matchmakers, promoters or managers of anyone not licensed by the commission shall be suspended by the commission.

AUTHORITY NOTE: Adopted in accordance with R.S. 4:61(D) and R.S. 4:64.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), repromulgated by the Office of the Governor, Boxing and Wrestling Commission, LR 31:

§135. Safety

A. Licensed clubs shall take all necessary precautions looking toward safety, order and proper behavior.

AUTHORITY NOTE: Adopted in accordance with R.S. 4:61(D) and R.S. 4:64.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), repromulgated by the Office of the Governor, Boxing and Wrestling Commission, LR 31:

Chapter 3. Professional Boxing

§134. Prohibited Ring Official Assignments

A. A ring official domiciled in the state of Louisiana shall not accept an assignment in the United States or its possessions that is not sponsored, sanctioned, approved or supervised by the commission, another official state commission, or a member of the Association of Boxing Commissions. *Official State Commission*, in this rule, meaning a commission domiciled and coming under the jurisdiction and regulatory powers of their state or United States possession.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Boxing and Wrestling Commission, LR 31:

§135. Judges and Referees

A. - B.2. ...

C. The referee is the sole arbiter of a bout and is the only individual authorized to stop a contest.

AUTHORITY NOTE: Adopted in accordance with R.S. 4:61.D. R.S. 4:64 and R.S. 4:79.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996),

amended by the Office of the Governor, Boxing and Wrestling Commission, LR 31:

§317. Judging Methods and Procedures

A. Scoring

1. - 1.d. ...

2. It is also noted that sportsmanship should be taken into consideration by the judges and the condition of the boxer at the end of the bout. The items listed do not have the same scoring value. Clearly, a man who hits his opponent and is aggressive throughout the contest is entitled to more credit than the one who is merely defensive and shows ring generalship. If the referee or the commission shall decide, at any time, that either contestant did not enter into a contest in good faith, or if the commission or referee discovers, at any time, that either or both contestants are not performing their part in good faith, or is guilty of any foul tactic, or of faking, or of violating any rule of the commission, the referee or commission may stop the contest. The referee may stop the contest when either contestant shows marked superiority or is apparently outclassed. If a contestant is knocked down, or falls through weakness, he must get up unassisted within 10 seconds. The referee shall count off the seconds. If the contestant attempts to get up, and goes back down, the count shall be continued by the referee where he left off. During the count, the opponent shall go to the farthest neutral corner and remain there. Should the opponent refuse to do so, or leave the farthest neutral corner, the referee may stop counting. Upon compliance by the opponent, however, the referee shall continue counting where he left off. If a contestant, who has fallen out of the ring during a contest, fails to return immediately, the referee shall count him out as if he were "down" allowing 20 seconds. In every round but the last round of a bout, should a boxer be down at the time the bell rings ending the round, the count shall continue until the boxer gets up or is counted out. The termination of the bout is at the discretion of the referee and/or the ring physician. Should a contestant leave the ring during the one-minute period between rounds, and fail to be in the ring when gong rings to resume boxing, the referee shall declare his opponent the winner. A contestant shall be deemed "down" when:

a. any part of his body other than his feet is on the floor;

b. or he is hanging helplessly over the ropes;

c. or he is rising from a "down" position.

3. Answering the Bell. Should a contestant finish any one round of a contest and fail to answer the bell for the succeeding round for any one of numerous reasons, such as cuts, injuries or admission of overwhelming superiority, the proper termination of the bout is by a technical knockout in the round for which he fails to answer the bell. For instance, both contestants have finished round 6. One of them fails to answer the bell for round 7, or indicates to the referee that he will not answer the bell. It is a "TKO-7." Indeed the man should be regarded as technically counted out while seated in his corner just as though the bell sounded for the seventh round. Certainly he completed round 6 and cannot, therefore, be charged with a loss in the sixth. Boxers suffering a knockout or a technical knockout will automatically be suspended for a minimum period of 30 days. Any violation of this rule jeopardizes the welfare of the boxer. No boxer

will be reinstated in less than 30 days unless investigated and specifically authorized by the commission or commission physician.

B. In the event a boxer has been knocked down the referee shall order such boxer's opponent to a neutral corner and commence a count of eight and such mandatory eight count after knockdowns is standard procedure in all bouts. Upon completion of said eight count the referee shall determine whether such boxer is able to continue.

C. There is no standing eight count.

D. When a boxer loses his mouthpiece, the referee shall call time as soon as possible and instruct such boxer's seconds to promptly wash or replace such boxer's mouthpiece and re-install same. If a referee determines that a boxer has deliberately spit out his mouthpiece for any reason, the referee shall issue a warning for the first such infraction and instruct the judges at the end of the round following a second such infraction to deduct one point from their scores for such boxer for that round. A boxer may be disqualified for deliberately spitting out his mouthpiece for the third time in any one round and his opponent declared the winner.

E. At the end of each round, each judge shall mark his or her scorecard in ink or indelible pencil with the score of each boxer in such round, and shall deliver the scorecard to the referee, who shall in turn deliver the scorecard of all judges to the commission.

F. At the conclusion of a contest or exhibition, except a contest or exhibition which has been concluded by knockout, technical knockout or disqualification, the commission shall tally the total points awarded to each participant and inform the announcer of the decision of the three judges.

G. The announcer shall announce the decision of the judges from the ring, and in the main events, the announcer shall call out the total points awarded by each judge. The boxer who has more points on the scorecard of the official is the winner on that judge's scorecard. The boxer who has been awarded the decision on at least two of the three judge's scorecard is the winner of the bout. In the event that neither boxer has been awarded the decision on at least two of the three judge's scorecard the decision shall be a draw, majority draw and all other possibilities.

H. The judges shall score a knockdown in any one round in a manner which is consistent with §317.A.

AUTHORITY NOTE: Adopted in accordance with R.S. 4:61.D, R.S.4:64, R.S. 4:76 and R.S. 4:79.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), amended by the Office of the Governor, Boxing and Wrestling Commission, LR 31:

§318. Rounds, Duration and Intermission

A. Rounds shall be a minimum of 180 seconds long and 120 seconds long for female boxers.

B. There shall be a 60-second intermission between rounds, unless otherwise directed or authorized by the commission. The referee, at the request of the ringside physician, may extend this intermission, if necessary to examine a participant, for up to 30 additional seconds.

C. Each championship contest will be scheduled for 12 rounds, 180 seconds long, and a 60 second rest period.

AUTHORITY NOTE: Adopted in accordance with R.S. 4:61.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), amended by the Office of the Governor, Boxing and Wrestling Commission, LR 31:

§321. Fouls, Deductions of Points Because of a Foul and Accidental Fouling

A. - A.17. ...

B. If a contestant fouls his opponent during a contest or commits any other infraction, the referee may penalize him by deducting points from his score, whether or not the foul or infraction was intentional. The referee may determine the number of points to be deducted in each instance and shall base his determination on the severity of the foul or infraction and its effect upon the opponent. Point deductions for intentional fouls are mandatory.

C. If an intentional foul causes an injury, and the injury is severe enough to terminate the bout immediately, the boxer causing the injury shall lose by disqualification.

D. If an intentional foul causes an injury, and the injury results in the bout being stopped in a later round, the injured boxer will win by a technical decision if he is ahead on the score cards or the bout will result in a technical draw if the injured boxer is behind or even on the score cards.

E. If a boxer injures himself while attempting to intentionally foul his opponent, the referee will not take any action in his favor, and this injury will be the same as one produced by a fair blow.

F. When the referee determines that it is necessary to deduct a point or points because of a foul or infraction, he shall warn the offender of the penalty to be assessed.

G. The referee shall, as soon as practical after the foul, notify the judges and both contestants of the number of points, if any, to be deducted from the score of the contestant.

H. Any point or points to be deducted for any foul or infraction must be deducted in the round in which the foul or infraction occurred, and may not be deducted from the score of any subsequent round.

I. Accidental Foul

1. If a bout is stopped because of an accidental foul, the referee shall determine whether the boxer who has been fouled can continue or not. If the boxer's chance of winning has not been seriously jeopardized as a result of a foul, the referee may order the bout continued after a reasonable interval. Before the bout begins again, the referee shall inform the commission's representative of his determination that the foul was accidental.

2. If the referee determines that the bout may not continue because of an injury suffered as the result of an accidental foul, the bout will result in a no decision if stopped before four completed rounds.

3. If an accidental foul renders a contestant unable to continue the bout after four completed rounds have occurred the bout will result in a technical decision awarded to the boxer who is ahead on the score cards at the time the bout is stopped.

a. After the fourth round has been completed, partial or incomplete rounds shall be scored.

b. However, any point deduction(s) occurring during this partial round will be deducted from the score of the completed rounds.

J. If an injury inflicted by an accidental foul later becomes aggravated by fair blows and the referee orders the bout stopped because of the injury, the outcome must be determined by scoring the completed rounds and the round during which the referee stops the bout.

AUTHORITY NOTE: Adopted in accordance with R.S. 4:61.D and R.S.4:64.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), amended by the Office of the Governor, Boxing and Wrestling Commission, LR 31:

§335. Compensation of Officials

A. All officials that participate in an event sanctioned by the commission, shall be compensated by the promoters/producers. The amount compensated will be predetermined, prior to the event, between the commission and the promoter/producer. Officials, in this rule, not to include the commission or physician.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Boxing and Wrestling Commission, LR 31:

Chapter 5. Professional Wrestling

§523. Wrestling Booking Agent

Repealed (Reserved).

AUTHORITY NOTE: Adopted in accordance with R.S. 4:61.D and R.S. 4:64.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission, 1967, amended 1974, repealed by the Office of the Governor, Boxing and Wrestling Commission, LR 31:

§525. Wrestling Promoters

Repealed (Reserved).

AUTHORITY NOTE: Adopted in accordance with R.S. 4:61.D and R.S. 4:64.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission, 1967, amended 1974, repealed by the Office of the Governor, Boxing and Wrestling Commission, LR 31:

§527. Application of Professional Boxing Rules

A. The following conditions specifically described in the professional boxing rules also apply to professional wrestling: appearance, weight, the fulfilling of contracts, ring introductions, acceptance of decision, managers, timekeepers, physicians, seconds, coaching, clothing worn by attendants, ring equipment, water bottles and buckets, betting, and notifying men before the contest.

AUTHORITY NOTE: Adopted in accordance with R.S. 4:61(D) and R.S. 4:64.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission, 1967, amended 1974, amended by the Office of the Governor, Boxing and Wrestling Commission, LR 31:

A.L. "Buddy" Embanato, Jr.
Chairman

0502#064

DECLARATION OF EMERGENCY

**Office of the Governor
Division of Administration
Racing Commission**

Corrupt and Prohibited Practices (LAC 35:I.1720)

The Louisiana State Racing Commission is exercising the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 4:141 et seq., amends the following Emergency Rule effective January 24, 2005, and it shall remain in effect for 120 days or until this Rule takes effect through the normal promulgation process, whichever comes first. The Louisiana State Racing Commission finds it necessary to amend this Rule to lower the post-race allowable levels of, and provide for pre-race testing of TCO₂ (total dissolved carbon dioxide), which is consistent with other racing jurisdictions.

Title 35

HORSE RACING

Part I. General Provisions

Chapter 17. Corrupt and Prohibited Practices

§1720. Total Dissolved Carbon Dioxide Testing

A. - B.1. ...

2. Blood samples for TCO₂ may be drawn prior to or after the race. Samples drawn after the race shall not be drawn earlier than 90 minutes following official post time. Samples drawn pre-race shall be drawn prior to the official post time.

3. The pre- or post-race TCO₂ level in the blood shall not exceed 36.0 milliequivalents per liter (mEq/L).

4. - 6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:148.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Racing Commission LR 26:1992 (September 2000), amended by the Office of the Governor, Division of Administration, Racing Commission, LR 31:

Charles A. Gardiner III
Executive Director

0502#012

DECLARATION OF EMERGENCY

**Office of the Governor
Division of Administration
Racing Commission**

**Human Recombinant Erythropoietin and/or Darbepoietin
(LAC 35:I.1716)**

The Louisiana State Racing Commission is exercising the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 4:141 et seq., adopts the following Emergency Rule effective January 24, 2005, and it shall remain in effect for 120 days or until this Rule takes effect through the normal promulgation process, whichever comes first. The Louisiana State Racing Commission finds it necessary to adopt this Rule to prohibit the use and presence of human recombinant erythropoietin and/or darbepoietin in race horses.

Title 35

HORSE RACING

Part I. General Provisions

Chapter 17. Corrupt and Prohibited Practices

§1716. Human Recombinant Erythropoietin and/or Darbepoietin

A. The possession and/or use of human recombinant erythropoietin and/or darbepoietin is strictly prohibited, and shall be classified as an RCI Category I substance. Every horse eligible to race in Louisiana is subject to random testing for these and other substances.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:142 and R.S. 4:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 31:

Charles A. Gardiner III
Executive Director

0502#014

DECLARATION OF EMERGENCY

**Office of the Governor
Division of Administration
Racing Commission**

Vesting of Title; Tests (LAC 35:XI.9913)

The Louisiana State Racing Commission is exercising the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 4:141 et seq., amends the following Emergency Rule effective January 24, 2005, and it shall remain in effect for 120 days or until this Rule takes effect through the normal promulgation process, whichever comes first. The Louisiana State Racing Commission finds it necessary to amend this Rule to provide for consequences of positive tests for equine infectious anemia and/or the presence of erythropoietin and/or darbepoietin antibodies in race horses being claimed.

Title 35

HORSE RACING

Part XI. Claiming Rules and Engagements

Chapter 99. Claiming Rule

§9913. Vesting of Title; Tests

A. Title to a claimed horse shall be vested in the successful claimant at the time the horse becomes a starter. The successful claimant shall then become the owner of the horse whether alive or dead, sound or unsound, or injured at any time after leaving the starting gate, during the race or after.

B. The successful claimant may request on the claim blank at the time he makes his claim that the horse be tested for the presence of equine infectious anemia via a Coggins test and/or erythropoietin and/or darbepoietin antibodies.

1. Should the test for equine infectious anemia prove positive, it shall be cause for a horse to be returned to his previous owner and barred from racing in the state of Louisiana.

2. Should the test for recombinant erythropoietin and/or darbepoietin antibodies prove positive, it shall be cause for a horse to be returned to his previous owner and barred from racing in the state of Louisiana until such time as the horse tests negative.

C. Additionally, if such erythropoietin and/or darbepoietin antibody positive result is found, the claimant, claimant's trainer or claimant's authorized agent shall have 48 hours in which to request the claim be declared invalid, such request to be made in writing to the stewards.

D. The expense of the tests and the maintenance of the horse during the period requested for the tests shall be absorbed by the successful claimant.

E. If such tests are requested the claimed horse will be sent to the retention barn of the Louisiana State Racing Commission where the state veterinarian will draw blood samples.

1. Blood samples drawn to test for equine infectious anemia shall be sent to a laboratory approved by the Louisiana Livestock Sanitary Board for the conduct of such test.

2. Blood samples drawn to detect by immunoassay the antibody to recombinant erythropoietin and/or darbepoietin shall be sent to the Louisiana State Racing Commission's state chemist.

F. Notwithstanding any inconsistent provision of this Part, a horse shall not be subject to disqualification from the race and from any share of the purse in the race, and the trainer of the horse shall not be subject to application of trainer's responsibility based upon the finding by the laboratory that the antibody of erythropoietin and/or darbepoietin was present in the sample taken from that horse.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:142 and R.S. 4:148.

HISTORICAL NOTE: Adopted by the Racing Commission in 1971, promulgated by the Department of Commerce, Racing Commission, LR 2:446 (December 1976), amended LR 3:42 (January 1977), LR 4:285 (August 1978), LR 5:136 (June 1979), by the Office of the Governor, Division of Administration, Racing Commission, LR 30:1476 (July 2004), LR 31:

Charles A. Gardiner III
Executive Director

0502#013

DECLARATION OF EMERGENCY

Department of Health and Hospitals Board of Nursing

Licensure as Advanced Practice Registered Nurse (LAC 46:XLVII.4507)

The Louisiana State Board of Nursing in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to the authority granted the board by R.S. 37:918 et seq., R.S.37:920 adopts the following Emergency Rule effective January 20, 2005, and it shall remain in effect for 120 days or until this Rule takes effect through the normal promulgation process, whichever comes first.

This Rule is being adopted on an emergency basis to diminish the potential disruption to Advanced Practice Registered Nurse (APRN) services in the state. This Rule provides for technical changes regarding the restructuring of Licensure requirements for APRNs; this re-promulgation is not open for comment.

Title 46 PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLVII. Nurses

Subpart 2. Registered Nurses

Chapter 45. Advanced Practice Registered Nurses

§4507. Licensure as Advanced Practice Registered Nurse

A. Initial Licensure

1. After January 1, 1996, the applicant shall meet the following requirements:

a. holds a current, unencumbered, unrestricted and valid registered nurse license in Louisiana and there are no grounds for disciplinary proceedings, as stated in R.S. 37:921;

b. completion of a minimum of a master's degree with a concentration in the respective advanced practice nursing specialty and/or functional role or completion of a post master's concentration in the respective advanced practice nursing specialty and/or functional role from an accredited college or university that meets the curriculum guidelines established by the board. Exception to the master's degree will be granted to those applicants who provide documentation as requested by the board that, prior to December 31, 1995, the applicant completed or was continuously enrolled in a formalized post-basic education program preparing for the advanced practice nursing specialty and/or functional role as approved by the board prior to December 31, 1995 as follows:

i. a program of studies offered through an institution of higher education which qualifies the graduate to take a certification examination in the advanced practice specialty and/or functional role; or

ii. a program of studies accepted by a nationally recognized certifying body which is recognized by the Louisiana State Board of Nursing; or

iii. a program which is individually recognized by the Board of Nursing based on established criteria; as stated in LAC 46:XLVII.4509;

c. submission of a completed application on a form furnished by the board;

d. submission of evidence of current certification in the respective advanced practice nursing specialty and/or functional role by a nationally recognized certifying body approved by the board. When specialty and/or functional role certification is not available, in addition to meeting the above requirements, the individual will be required to meet the commensurate requirements specified below in Paragraph 2;

e. submission of a non-refundable fee as specified in LAC 46:XLVII.3341;

f. after initial licensure, applicants seeking licensure for advanced practice in an additional specialty/role shall meet the requirements stated in LAC 46:XLVII.4507.A.1.a-d.

2. Commensurate requirements when certification is not available:

a. holds the minimum of a master's degree with a concentration in the respective advanced practice nursing specialty and/or functional role from a regionally accredited college or university or a program otherwise approved by the

board and has practiced with a APRN temporary permit for a minimum of six months to a maximum of 24 months; and

b. have provided a minimum of 800 hours of patient care under the direction of an approved preceptor within the past 24 months; up to 400 of these may be earned through clinical practicum in a masters program; and

c. submit an affidavit for waiver of Certification Examination on a form provided by the board.

3. An APRN license shall be issued with an expiration date that coincides with the applicant's RN license.

B. Temporary Permit: Initial Applicants

1. An APRN applicant who possesses a current RN license or a valid RN temporary permit, may be granted a temporary permit which allows the applicant to practice under guidance of a licensed APRN, physician, dentist or approved preceptor within the practice specialty and/or functional role of the applicant, except as provided for in R.S. 37:930.A.3:

a. in the process of applying for initial licensure under LAC 46:XLVII.4507.A; and

b. has been accepted as a first- time candidate for the national professional certification examination; or

c. in the process of meeting the practice eligibility requirements for the national professional certification examination for the advanced nursing practice specialty and/or functional role as recognized by the board; or

d. in the process of meeting the practice requirements for licensure by commensurate requirements; or

e. is awaiting certification results based upon initial application; and

f. there are no grounds for disciplinary proceedings as stated in R.S. 37:921.

2. A nurse practicing under the temporary permit shall use the title advanced practice registered nurse applicant or APRN applicant.

3. Upon receipt of initial certification examination results:

a. the temporary permit shall expire;

b. applicant shall submit or cause to be submitted, a copy of the results to the board;

c. unsuccessful candidates shall:

i. cease to practice as an APRN applicant (does not prohibit practice as a registered nurse);

ii. return the temporary permit to the board;

iii. notify the employer of the results.

4. Upon completion of the commensurate requirements or at the end of two years, the temporary permit shall expire.

5. An advanced practice registered nurse seeking licensure in either an additional advanced practice nursing category or area of specialization, may seek a temporary permit as stated in LAC 46:XLVII.4507.B and D.

6. The APRN temporary permit may be extended until receipt of initial certification results.

C. Licensure by Endorsement. The board may issue a license by endorsement if the applicant has practiced under the laws of another state and if, in the opinion of the board, the applicant meets the requirements for licensure as an APRN in this jurisdiction.

1. If the applicant is applying from another jurisdiction that licenses the category of APRN for which the applicant is seeking licensure, the applicant shall submit:

a. a completed application on a form furnished by the board;

b. the required nonrefundable fee as set forth in LAC 46:XLVII.3341;

c. verification of current RN licensure in this jurisdiction or documentation that the applicant has applied for licensure as a RN and meets the requirements of this jurisdiction, and there are no grounds for disciplinary proceeding as stated in R.S. 37:921;

d. verification of licensure status directly from the jurisdiction of original licensure in the advanced practice category;

e. verification of current unencumbered license in the advanced practice category directly from the jurisdiction of current or most recent employment as an APRN;

f. verification of educational requirements as stated in LAC 46:XLVII.4507.A.1.b;

g. verification of current national certification in the respective specialty and/or functional role area as recognized by the board; or meets commensurate requirements as specified in LAC 46:XLVII.4507.A.2;

h. documentation of meeting the requirements in LAC 46:XLVII.4515.

2. If the applicant is applying from a jurisdiction that does not license the APRN category for which the applicant is seeking licensure, the applicant shall submit LAC 46:XLVII:4507.C.1.a, b, c, f, g, and h as stated above, plus:

a. information regarding the applicant's qualifications for advanced practice directly from the board in the state where the applicant first practiced in the APRN category;

b. information regarding the applicant's qualifications for advanced practice directly from the board in the state where the applicant was last employed in the APRN category.

3. If the applicant is applying from a jurisdiction that does not verify advanced practice or does not meet the endorsement requirements, the applicant shall qualify by meeting the requirements for initial APRN licensure, LAC 46:XLVII.4507.A and B.

D. Temporary Permit: Endorsement Applicants

1. A nurse seeking APRN licensure by endorsement, and has been issued a RN temporary permit, may be issued a temporary permit to practice as an APRN for a maximum of 90 days if the applicant submits:

a. a completed APRN application on a form furnished by the board;

b. the required nonrefundable fee as set forth in LAC 46:XLVII.3341;

c. evidence of meeting the educational and certification requirements specified in LAC 46:XLVII.4507.A.1.b and d; or

d. documentation of registration for the certifying examination within 90 days.

2. The APRN temporary permit may be extended until receipt of initial certification results.

E. Renewal of Licenses by Certification, Commensurate Requirements, or Grandfathering

1. The date for renewal of licensure to practice as an APRN shall coincide with renewal of the applicant's RN license. Renewal of the APRN license is contingent upon renewal of the RN license and verification that there are no grounds for disciplinary proceedings as stated in R.S. 37:921. An applicant for renewal of an APRN license shall submit to the board:

a. a completed application on a form furnished by the board;

b. evidence of current certification/recertification, unless the APRN has been licensed by the board in accordance with R.S. 37:912.B.(3)(4); or in accordance with commensurate requirements when certification is not available (R.S. 37:920.A.2). Effective January 1, 2002, and required for relicensure in 2003, APRNs licensed by the board in accordance with commensurate requirements when certification is not available (R.S. 37:920.A.2.) shall comply with the requirements specified in E.2. below;

c. the licensure renewal fee as specified in LAC 46:XLVII.3341.

2. APRNs initially licensed in accordance with R.S. 37:912.B(3)(4) (grandfathered) and are not advanced practice certified, or R.S. 37:920.A.(2) and LAC 46:XLVII.4507.A.2. whose category and area of specialization does not provide for certification/recertification (commensurate requirements) shall submit the following documentation for renewal, in addition to meeting the requirements specified above in §4507.E.1.a.-c.

a. a minimum of 300 hours of practice in advanced practice registered nursing, as defined in R.S.37:913.3.a, within a 12-month period; and

b. a minimum of 2 college credit hours per year of relevance to the advanced practice role; or

c. a minimum of 30 continuing education (C.E.) contact hours approved by the board each year. Of the 30 contact hours, a maximum of 10 C.E. contact hours may be approved Continuing Medical Education (CME's);

d. the above Subparagraphs b or c will meet the C.E. Requirements for the registered nurse and the advanced practice registered nurse licensure renewal.

F. Reinstatement of an APRN License

1. Reinstatement of an APRN license, which has lapsed or been inactive for less than four years. An APRN who has failed to renew his/her license, or has had an inactive licensure status less than four years, may apply for reinstatement by submitting to the board:

a. evidence of current RN licensure;

b. completed application on a form furnished by the board;

c. evidence of current certification/recertification by a national certifying body accepted by the board; or

d. APRNs initially licensed in accordance with R.S. 37:912.B(3)(4) or 920.A.(2.) and 4507.A.2 whose specialty and/or functional role does not provide for certification/recertification shall apply for a six month temporary permit, and practice under the temporary permit and current practice standards set forth by the respective advanced practice nursing specialty and/or functional role; and submit the following documentation with the application for reinstatement for each year of inactive or lapsed status:

i. a minimum of 300 hours of practice in advanced practice registered nursing as defined in R.S. 37:913.(3)(a) for each year of inactive or lapsed status up to a maximum of 800 hours; and

ii. a minimum of 2 college credit hours per year of relevance to the advanced practice role; or

iii. a minimum of 30 continuing education (C.E.) contact hours approved by the board each year. Of the 30 contact hours, a maximum of 10 C.E. contact hours may be approved Continuing Medical Education (CMEs); and

e. the required fee as specified in LAC 46:XLVII.3341.

2. Reinstatement of an APRN license, which has lapsed or been inactive four years or more. If the applicant's APRN license has been lapsed or inactive for four or more years, in addition to meeting the above requirements in Subsection F.1.a-e., the applicant shall:

a. apply for a six month temporary permit; and

b. practice under the temporary permit and current practice standards set forth by the respective advanced practice nursing specialty and/or functional role; and

c. if seeking certification/recertification, successfully complete the number of clinical practice hours required by the national certifying body approved by the board, under the guidance of a preceptor approved by the board; and

d. submit evidence of current certification by a national certifying body approved by the board; or

e. have a minimum of 800 hours of clinical practice in the area of clinical specialization when specialty certification is not available; and

f. submit evidence of compliance with §4507.E.2 b. or c for each year of inactive or lapsed status; and

g. cause to have submitted a final evaluation by the approved preceptor verifying successful completion of six months of full time practice or the equivalent hours in the area of specialization (minimum of 800 hours).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Nursing, LR 22:283 (April 1996), amended LR 27:723 (May 2001), LR 29:580 (April 2003), LR 31:

Barbara L. Morvant
Executive Director

0502#019

DECLARATION OF EMERGENCY

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

Disproportionate Share Hospital Payment Methodologies
(LAC 50:V.301-315)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Emergency Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated a Rule to adopt the provisions governing the disproportionate share payment methodologies for hospitals in May of 1999 (*Louisiana Register*, Volume 25, Number 5). The May 20, 1999 Rule was later amended to change the criteria used to define rural hospitals and to clarify the policy governing final payments and adjustments (*Louisiana Register*, Volume 29, Number 1).

The Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000 made provisions for public hospitals to receive disproportionate share hospital adjustment payments up to 175 percent of their allowable uncompensated care cost. Act 1024 of the 2001 Regular Session directed the Department of Health and Hospitals, as the federally designated Medicaid state agency, to specify in the Medicaid State Plan how uncompensated care is defined and calculated and to determine what facilities qualify for uncompensated care payments and the amount of the payments. In determining payments, the department shall prioritize local access to primary health care for the medically indigent and uninsured, and shall not include unreimbursed costs resulting from excess inpatient hospital capacity. For the period July 1, 2003 through June 30, 2005, the state's Medicaid uncompensated care payments shall be distributed in proportion to the amount and type of uncompensated care reported by all qualified facilities as required by Senate Bill No. 883 of the 2001 Regular Session. Nothing shall be construed to impede or preclude the Department of Health and Hospitals from implementing the provisions in the Rural Hospital Preservation Act. Further, Senate Concurrent Resolution 94 of the 2001 Regular Session and Senate Concurrent Resolution 27 of the 2002 Regular Session of the Louisiana Legislature requested the Department of Health and Hospitals, the Louisiana State University Health Sciences Center-Health Services Division, and the Louisiana State University Health Sciences Center-Shreveport to study and recommend common acute hospital payment methodologies for state and non-state hospitals participating in the Medicaid Program and the Medicaid Disproportionate Share Program. In accordance with the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000 and the findings and recommendations contained in the final reports of the study committees, the department repealed and replaced all provisions governing disproportionate share hospital payments (*Louisiana Register*, Volume 29, Number 6). Acts 14, 526 and 1148 of the 2003 Regular Session of the Louisiana Legislature directed the department to amend the qualifying criteria and the payment methodology for disproportionate share payments to small rural hospitals. In compliance with Acts 14, 526 and 1148, the Bureau amended the July 1, 2003 Emergency Rule (*Louisiana Register*, Volume 29, Number 9). This Emergency Rule is being promulgated to continue provisions contained in the July 1, 2003 Rule. This action is being taken to enhance federal revenue.

Effective February 25, 2005 the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services

Financing hereby repeals and replaces all rules governing disproportionate share hospital payment methodologies.

Title 50

PUBLIC HEALTH MEDICAL ASSISTANCE

Part V. Medical Assistance Program—Hospital Services

Subpart 1. Inpatient Hospitals

Chapter 3. Disproportionate Share Hospital Payment Methodologies

§301. General Provisions

A. The reimbursement methodology for inpatient hospital services incorporates a provision for an additional payment adjustment for hospitals serving a disproportionate share of low-income patients.

B. The following provisions govern the disproportionate share hospital (DSH) payment methodologies for qualifying hospitals.

1. Total cumulative disproportionate share payments under any and all disproportionate share hospital payment methodologies shall not exceed the federal disproportionate share state allotment for Louisiana for each federal fiscal year or the state appropriation for disproportionate share payments for each state fiscal year. The department shall make necessary downward adjustments to hospital's disproportionate share payments to remain within the federal disproportionate share allotment and the state disproportionate share appropriated amount.

2. Appropriate action including, but not limited to, deductions from DSH, Medicaid payments and cost report settlements shall be taken to recover any overpayments resulting from the use of erroneous data, or if it is determined upon audit that a hospital did not qualify.

3. DSH payments to a hospital determined under any of the methodologies described in this Chapter 3 shall not exceed the hospital's net uncompensated cost as defined in §305-313 or the disproportionate share limits as defined in Section 1923(g)(1)(A) of the Social Security Act for the state fiscal year to which the payment is applicable. Any Medicaid profit shall be used to offset the cost of treating the uninsured in determining the hospital specific DHH limits. High Medicaid hospitals can also qualify as other uninsured hospitals. Public hospitals included in §313 shall receive DSH payments up to 175 percent of the hospital's net uncompensated costs.

4. Qualification is based on the hospital's latest filed cost report as of March 31 of the current state fiscal year and related uncompensated cost data as required by the department. Qualification for small rural hospitals is based on the latest filed cost report. Hospitals must file cost reports in accordance with Medicare deadlines, including extensions. Hospitals that fail to timely file Medicare cost reports and related uncompensated cost data will be assumed to be ineligible for disproportionate share payments. Only hospitals that return timely disproportionate share qualification documentation will be considered for disproportionate share payments. After the final payment during the state fiscal year has been issued, no adjustment will be given on DSH payments with the exception of public state-operated hospitals, even if subsequently submitted documentation demonstrates an increase in uncompensated care costs for the qualifying hospital. For hospitals with distinct part psychiatric units, qualification is based on the entire hospital's utilization.

5. Hospitals shall be notified by letter at least 60 days in advance of calculation of DSH payment to submit documentation required to establish DSH qualification. Only hospitals that timely return DSH qualification documentation will be considered for DSH payments. The required documents are:

- a. obstetrical qualification criteria;
- b. low income utilization revenue calculation;
- c. Medicaid cost report; and
- d. uncompensated cost calculation.

6. Hospitals and/or units which close or withdraw from the Medicaid Program shall become ineligible for further DSH pool payments for the remainder of the current DSH pool payment cycle and thereafter.

AUTHORITY NOTE: Promulgated in 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:

§303. Disproportionate Share Hospital Qualifications

A. In order to qualify as a disproportionate share hospital, a hospital must:

1. have at least two obstetricians who have staff privileges and who have agreed to provide obstetric services to individuals who are Medicaid eligible. In the case of a hospital located in a rural area (i.e., an area outside of a metropolitan statistical area), the term *obstetrician* includes any physician who has staff privileges at the hospital to perform nonemergency obstetric procedures; or

2. treat inpatients who are predominantly individuals under 18 years of age; or

3. be a hospital which did not offer nonemergency obstetric services to the general population as of December 22, 1987; and

4. have a utilization rate in excess of one or more of the following specified minimum utilization rates:

a. Medicaid utilization rate is a fraction (expressed as a percentage). The numerator is the hospital's number of Medicaid (Title XIX) inpatient days. The denominator is the total number of the hospital's inpatient days for a cost reporting period. Inpatient days include newborn and psychiatric days and exclude swing bed and skilled nursing days. Hospitals shall be deemed disproportionate share providers if their Medicaid utilization rates are in excess of the mean, plus one standard deviation of the Medicaid utilization rates for all hospitals in the state receiving payments; or

b. hospitals shall be deemed disproportionate share providers if their low-income utilization rates are in excess of 25 percent. Low-income utilization rate is the sum of:

i. the fraction (expressed as a percentage). The numerator is the sum (for the period) of the total Medicaid patient revenues plus the amount of the cash subsidies for patient services received directly from state and local governments. The denominator is the total amount of revenues of the hospital for patient services (including the amount of such cash subsidies) in the cost reporting period from the financial statements; and

ii. the fraction (expressed as a percentage). The numerator is the total amount of the hospital's charges for inpatient services which are attributable to charity (free) care in a period, less the portion of any cash subsidies as described in §303.A.4.b.i in the period which are reasonably

attributable to inpatient hospital services. The denominator is the total amount of the hospital's charges for inpatient hospital services in the period. For public providers furnishing inpatient services free of charge or at a nominal charge, this percentage shall not be less than zero. This numerator shall not include contractual allowances and discounts (other than for indigent patients ineligible for Medicaid), i.e., reductions in charges given to other third-party payers, such as HMOs, Medicare, or Blue Cross; nor charges attributable to Hill-Burton obligations. A hospital providing "free care" must submit its criteria and procedures for identifying patients who qualify for free care to the Bureau of Health Services Financing for approval. The policy for free care must be posted prominently and all patients must be advised of the availability of free care and the procedures for applying. Hospitals not in compliance with free care criteria will be subject to recoupment of DSH and Medicaid payments; or

c. hospitals shall be deemed disproportionate share providers eligible for reimbursement for inpatient services if their inpatient uninsured utilization rates are in excess of 3 percent. Inpatient uninsured utilization rate is a fraction (expressed as a percentage). The numerator is the total amount of the hospital's charges for inpatient services furnished to uninsured persons for the period. The denominator is the total amount of the hospital's charges for inpatient services furnished to all persons for the period; or

d. hospitals shall be deemed disproportionate share providers eligible for reimbursement for outpatient services if their outpatient uninsured utilization rates are in excess of 3 percent:

i. outpatient uninsured utilization rate is a fraction (expressed as a percentage). The numerator is the total amount of the hospital's charges for outpatient services furnished to uninsured persons for the period. The denominator is the total amount of the hospital's charges for outpatient services furnished to all persons for the period; or

5. effective November 3, 1997, be a small rural hospital as defined in §311.A.2.a-h; and

6. in addition to the qualification criteria outlined in §303.A.1-5, effective July 1, 1994, must also have a Medicaid inpatient utilization rate of at least one percent.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

§305. High Uninsured Hospitals

A. Definitions

High Uninsured Utilization Rate Hospital—a hospital that has an uninsured utilization rate in excess of the mean, plus one standard deviation of the uninsured utilization rates for all hospitals.

Net Uncompensated Cost—the cost of furnishing inpatient and outpatient hospital services to uninsured persons, supported by patient-specific data, net of any payments received from such patients.

B. DSH payments to individual high uninsured hospitals shall be calculated as follows:

1. Inpatient High Uninsured Hospital Payments shall be equal to 100 percent of the hospital's cost of furnishing inpatient hospital services to uninsured persons, supported by patient-specific data, net of any payments received from such

patients. DSH payments calculated under this payment methodology shall be subject to the adjustment provision below in Subsection E.; and/or

2. Outpatient High Uninsured **C** Payments shall be equal to 100 percent of the hospital's cost of furnishing outpatient hospital services to uninsured persons, supported by patient-specific data, net of any payments received from such patients. DSH payments calculated under this payment methodology shall be subject to the adjustment provision below in Subsection E.

C. It is mandatory that hospitals seek all third party payments including Medicare, Medicaid and other third party carriers and payments from patients. Hospitals must certify that excluded from net uncompensated cost are any costs for the care of persons eligible for Medicaid at the time of registration. Hospitals must maintain a log documenting the provision of uninsured care as directed by the department. Hospitals must adjust uninsured charges to reflect retroactive Medicaid eligibility determination. Patient specific data is required after July 1, 2003. Hospitals shall annually submit:

1. an annual attestation that patients whose care is included in the hospitals' net uncompensated cost are not Medicaid eligible at the time of registration; and

2. supporting patient-specific demographic data that does not identify individuals, but is sufficient for audit of the hospitals' compliance with the Medicaid ineligibility requirement as required by the department, including:

- a. patient age;
- b. family size;
- c. number of dependent children; and
- d. household income.

D. DSH payments to individual high uninsured hospitals shall be equal to 100 percent of the hospital's net uncompensated costs and subject to the adjustment provision in §301.B.

E. In the event that it is necessary to reduce the amount of disproportionate share payments to remain within the federal disproportionate share allotment or the state DSH-appropriated amount, the department shall calculate a pro rata decrease for each high uninsured hospital based on the ratio determined by:

1. dividing that hospital's uncompensated cost by the total uncompensated cost for all qualifying high uninsured hospitals during the state fiscal year; and then

2. multiplying by the amount of disproportionate share payments calculated in excess of the federal disproportionate allotment or state DSH-appropriated amount.

F. A hospital receiving DSH payments shall furnish emergency and nonemergency services to uninsured persons with family incomes less than or equal to 100 percent of the federal poverty level on an equal basis to insured patients.

AUTHORITY NOTE: Promulgated in 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:

§307. Other Uninsured Hospitals

A. Definitions

Net Uncompensated Cost—the cost of furnishing inpatient and outpatient hospital services to uninsured

persons, supported by patient-specific data, net of any payments received from such patients.

Other Uninsured Utilization Rate Hospital—a qualifying hospital that is not included in §305, §311, §313 or §315.

B. DSH payments to an individual other uninsured hospital shall be calculated as follows:

1. Inpatient Other Uninsured **C** All qualifying hospitals shall be arrayed from lowest to highest rate according to their inpatient uninsured utilization rate. DSH payments to hospitals in the first quintile of the distribution shall be equal to 25 percent of the hospital's cost of furnishing inpatient hospital services to uninsured persons, supported by patient-specific data, net of payments received from such patients and subject to the adjustment provision below. DSH payments to hospitals in the second through the fifth quintiles of the distribution shall be equal to 40, 55, 70 and 85 percent of the hospital's cost of furnishing inpatient hospital services to uninsured persons, supported by patient-specific data, net of payments received from such patients, respectively and subject to the adjustment provision below in Subsection E.

2. Outpatient Other Uninsured **C** All qualifying hospitals shall be arrayed from lowest to highest rate according to their outpatient uninsured utilization rate. DSH payments to hospitals in the first quintile of the distribution shall be equal to 25 percent of the hospital's cost of furnishing inpatient hospital services to uninsured persons, supported by patient-specific data, net of payments received from such patients and subject to the adjustment provision below. DSH payments to hospitals in the second through the fifth quintiles of the distribution shall be equal to 40, 55, 70 and 85 percent of the hospital's cost of furnishing inpatient hospital services to uninsured persons, supported by patient-specific data, net of payments received from such patients, respectively and subject to the adjustment provision below in Subsection E.

C. It is mandatory that hospitals seek all third party payments including Medicare, Medicaid and other third party carriers and payments from patients. Hospitals must certify that excluded from net uncompensated cost are any costs for the care of persons eligible for Medicaid at the time of registration. Hospitals must maintain a log documenting the provision of uninsured care as directed by the department. Hospitals must adjust uninsured charges to reflect retroactive Medicaid eligibility determination. Patient specific data is required after July 1, 2003. Hospitals shall annually submit:

1. an attestation that patients whose care is included in the hospitals' net uncompensated cost are not Medicaid eligible at the time of registration; and

2. supporting patient-specific demographic data that does not identify individuals, but is sufficient for audit of the hospitals' compliance with the Medicaid ineligibility requirement as required by the department, including:

- a. patient age;
- b. family size;
- c. number of dependent children; and
- d. household income.

D. DSH payments to an individual other uninsured hospital shall be based on the hospital's uninsured utilization rate and the distribution of all other uninsured hospitals

uninsured utilization rates. DSH payments to hospitals in the first quintile of the distribution shall be equal to 25 percent of the hospital's net uncompensated costs and subject to the adjustment provision in §301.B. DSH payments to hospitals in the second through the fifth quintiles of the distribution shall be equal to 40, 55, 70 and 85 percent of the hospital's net uncompensated cost, respectively.

E. In the event it is necessary to reduce the amount of disproportionate share payments to remain within the federal disproportionate share allotment or the state DSH-appropriated amount, the department shall calculate a pro rata decrease for each other uninsured hospital based on the ratio determined by:

1. dividing that hospital's uncompensated cost by the total uncompensated cost for all qualifying other uninsured hospitals during the state fiscal year; and then

2. multiplying by the amount of disproportionate share payments calculated in excess of the federal disproportionate allotment or state DSH-appropriated amount.

F. A hospital receiving DSH payments shall furnish emergency and nonemergency services to uninsured persons with family incomes less than or equal to 100 percent of the federal poverty level on an equal basis to insured patients.

AUTHORITY NOTE: Promulgated in 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:

§309. High Medicaid Hospitals

A. Definition. *High Medicaid Utilization Rate Hospital*—a hospital that has a Medicaid utilization rate in excess of the mean, plus one standard deviation of the Medicaid utilization rates for all hospitals in the state receiving payments and that is not included in §305.

1. Medicaid utilization rate is a fraction (expressed as a percentage). The numerator is the hospital's number of Medicaid (Title XIX) inpatient days. The denominator is the total number of the hospital's inpatient days for a cost-reporting period.

B. DSH payments to individual high Medicaid hospitals shall be based on actual paid Medicaid days for a six-month period ending on the last day of the last month of that period, but reported at least 30 days preceding the date of payment. Annualization of days for the purposes of the Medicaid days pool is not permitted. The amount will be obtained by DHH from a report of paid Medicaid days by service date.

C. Payment based on Medicaid days provided by qualifying hospitals shall be in accordance with the following two pools:

1. a acute care hospital that is classified as a major teaching hospital and is contractually affiliated with a university located within the State of Louisiana that is recognized by the Centers for Disease Control and Prevention and the Health Resource and Services Administration, Maternal and Child Health Bureau as maintaining a Comprehensive Hemophilia Care Center;

2. all other acute high Medicaid Utilization Rate Hospitals.

D. A pro rata decrease necessitated by conditions specified in §301.B. for high Medicaid hospitals will be calculated based on the ratio determined by:

1. dividing the hospitals' Medicaid days by the Medicaid days for all qualifying high Medicaid hospitals; then

2. multiplying by the amount of disproportionate share payments calculated in excess of the federal disproportionate share allotment or the state disproportionate share appropriated amount.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

§311. Small Rural Hospitals

A. Definitions

Net Uncompensated Cost—the cost of furnishing inpatient and outpatient hospital services, net of Medicare costs, Medicaid payments (excluding disproportionate share payments), costs associated with patients who have insurance for services provided, private payer payments, and all other inpatient and outpatient payments received from patients. Any uncompensated costs of providing health care services in a rural health clinic licensed as part of a small rural hospital as defined below shall be considered outpatient hospital services in the calculation of uncompensated costs.

Small Rural Hospital—a hospital (excluding a long-term care hospital, rehabilitation hospital, or freestanding psychiatric hospital but including distinct part psychiatric units) that meets the following criteria:

- a. had no more than 60 hospital beds as of July 1, 1994, and is located in a parish with a population of less than 50,000 or in a municipality with a population of less than 20,000; or

- b. meets the qualifications of a sole community hospital under 42 CFR §412.92(a); or

- c. had no more than 60 hospital beds as of July 1, 1999 and is located in a parish with a population of less than 17,000 as measured by the 1990 census; or

- d. had no more than 60 hospital beds as of July 1, 1997 and is a publicly-owned and operated hospital that is located in either a parish with a population of less than 50,000 or a municipality with a population of less than 20,000; or

- e. had no more than 60 hospital beds as of June 30, 2000 and is located in a municipality with a population, as measured by the 1990 census, of less than 20,000; or

- f. had no more than 60 beds as of July 1, 1997 and is located in a parish with a population, as measured by the 1990 and 2000 census, of less than 50,000; or

- g. was a hospital facility licensed by the department that had no more than 60 hospital beds as of July 1, 1994, which hospital facility:

- i. has been in continuous operation since July 1, 1994;

- ii. is currently operating under a license issued by the department; and

- iii. is located in a parish with a population, as measured by the 1990 census, of less than 50,000; or

- h. has no more than 60 hospital beds or has notified the department as of March 7, 2002 of its intent to reduce its number of hospital beds to no more than 60, and is located in a municipality with a population of less than 13,000 and in a

parish with a population of less than 32,000 as measured by the 2000 census; or

i. has no more than 60 hospital beds or has notified DHH as of December 31, 2003, of its intent to reduce its number of hospital beds to no more than 60; and

i. is located, as measured by the 2000 census, in a municipality with a population of less than 7,000;

ii. is located, as measured by the 2000 census, in a parish with a population of less than 53,000; and

iii. is located within 10 miles of a United States military base; or

j. has no more than 60 hospital beds as of September 26, 2002; and

i. is located, as measured by the 2000 census, in a municipality with a population of less than 10,000; and

ii. is located, as measured by the 2000 census, in a parish with a population of less than 33,000; or

k. has no more than 60 hospital beds as of January 1, 2003; and

i. is located, as measured by the 2000 census, in a municipality with a population of less than 11,000; and

ii. is located, as measured by the 2000 census, in a parish with a population of less than 90,000.

B. Payment based on uncompensated cost for qualifying small rural hospitals shall be in accordance with the following three pools:

1. *Public (Nonstate) Small Rural Hospitals*—small rural hospitals as defined in §311.A.1, which are owned by a local government.

2. *Private Small Rural Hospitals*—small rural hospitals as defined in §311.A.1, that are privately owned.

3. *Small Rural Hospitals*—small rural hospitals as defined in §311.A.2.a - §311.A.2.k.ii.

C. Payment to hospitals included in §311.B.1, §311.B.2, and §311.B.3 is equal to each qualifying rural hospital's pro rata share of uncompensated cost for all hospitals meeting these criteria for the latest filed cost report multiplied by the amount set for each pool. If the cost reporting period is not a full period (12 months), actual uncompensated cost data from the previous cost reporting period may be used on a pro rata basis to equate a full year.

D. Pro Rata Decrease

1. A pro rata decrease necessitated by conditions specified in §301.B. for rural hospitals described in this §311 will be calculated using the ratio determined by:

a. dividing the qualifying rural hospital's uncompensated costs by the uncompensated costs for all rural hospitals in §311; then

b. multiplying by the amount of disproportionate share payments calculated in excess of the federal DSH allotment or the state DSH appropriated amount.

2. No additional payments shall be made after the final payment for the state fiscal year is disbursed by the department. Recoupment shall be initiated upon completion of an audit if it is determined that the actual uncompensated care costs for the state fiscal year for which the payment is applicable is less than the actual amount paid.

E. Qualifying hospitals must meet the definition for a small rural hospital contained in §311.A.2. Qualifying hospitals must maintain a log documenting the provision of uninsured care as directed by the department.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

§313. Public State-Operated Hospitals

A. Definitions

Net Uncompensated Cost—the cost of furnishing inpatient and outpatient hospital services, net of Medicare costs, Medicaid payments (excluding disproportionate share payments), costs associated with patients who have insurance for services provided, private payer payments, and all other inpatient and outpatient payments received from patients.

Public State-Operated Hospital—a hospital that is owned or operated by the State of Louisiana.

B. DSH payments to individual public state-owned or operated hospitals shall be up to 175 percent of the hospital's net uncompensated costs. Final payment will be based on the uncompensated cost data per the audited cost report for the period(s) covering the state fiscal year.

C. In the event that it is necessary to reduce the amount of disproportionate share payments to remain within the federal disproportionate share allotment or the state DSH appropriated amount, the department shall calculate a pro rata decrease for each public state-owned or operated hospital based on the ratio determined by:

1. dividing that hospital's uncompensated cost by the total uncompensated cost for all qualifying public state-owned or operated hospitals during the state fiscal year; and then

2. multiplying by the amount of disproportionate share payments calculated in excess of the federal disproportionate allotment or state DSH-appropriated amount.

D. It is mandatory that hospitals seek all third party payments including Medicare, Medicaid and other third party carriers and payments from patients. Hospitals must certify that excluded from net uncompensated cost are any costs for the care of persons eligible for Medicaid at the time of registration. Acute hospitals must maintain a log documenting the provision of uninsured care as directed by the department. Hospitals must adjust uninsured charges to reflect retroactive Medicaid eligibility determination. Patient specific data is required after July 1, 2003. Hospitals shall annually submit:

1. an attestation that patients whose care is included in the hospitals' net uncompensated cost are not Medicaid eligible at the time of registration; and

2. supporting patient-specific demographic data that does not identify individuals, but is sufficient for audit of the hospitals' compliance with the Medicaid ineligibility requirement as required by the department, including:

- a. patient age;
- b. family size;
- c. number of dependent children; and
- d. household income.

AUTHORITY NOTE: Promulgated in 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:

§315. Psychiatric Hospitals

A. Definitions

Net Uncompensated Cost The cost of furnishing inpatient and outpatient hospital services, net of Medicare costs, Medicaid payments (excluding disproportionate share payments), costs associated with patients who have insurance for services provided, private payer payments, and all other inpatient and outpatient payments received from patients.

Psychiatric Hospital A free standing psychiatric hospital that is not included in §313.

B. DSH payments to individual free standing psychiatric hospitals shall be based on actual paid Medicaid days for a six-month period ending on the last day of the last month of that period, but reported at least 30 days preceding the date of payment. Annualization of days for the purposes of the Medicaid days pool is not permitted. The amount will be obtained by DHH from a report of paid Medicaid days by service date.

C. Disproportionate share payments for individual free standing psychiatric hospitals shall be calculated based on the product of the ratio determined by:

1. dividing each qualifying free standing psychiatric hospital's actual paid Medicaid inpatient days for a six-month period ending on the last day of the month preceding the date of payment (which will be obtained by DHH from a report of paid Medicaid days by service date) by the total Medicaid inpatient days obtained from the same report of all qualified free standing psychiatric hospitals. Total Medicaid inpatient days include Medicaid nursery days but do not include skilled nursing facility or swing-bed days; and

2. multiplying by an amount of funds for free standing psychiatric to be determined by the director of the Bureau of Health Services Financing

D. A pro rata decrease necessitated by conditions specified in §301.B. for hospitals in §315 will be calculated based on the ratio determined by:

1. dividing the hospitals' Medicaid days by the Medicaid days for all qualifying hospitals in §315; then

2. multiplying by the amount of disproportionate share payments calculated in excess of the federal disproportionate share allotment or the state disproportionate share appropriated amount.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

Implementation of the provisions of this Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

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

Frederick P. Cerise, M.D., M.P.H.
Secretary

0502#042

DECLARATION OF EMERGENCY

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

Early and Periodic Screening, Diagnosis and Treatment Program
Early Intervention Services
for Infants and Toddlers with Disabilities
(LAC 50:XV.8109)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing hereby amends LAC 50:XV.Chapter 81 under 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 the 2004-2005 General Appropriation Act, which states, "The Secretary shall implement reductions in the Medicaid program as necessary to control expenditures to the level approved in this schedule. The Secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening, and utilization review, and other measures as allowed by federal law." This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953.B(1) et seq., and shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a Rule to establish early intervention services for infants and toddlers with disabilities under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program (*Louisiana Register*, Volume 30, Number 4) in conjunction with the transfer of Louisiana's early intervention system under Part C of the Individuals with Disabilities Education Act (IDEA) from the Department of Education, Division of Special Populations to the Department of Health and Hospitals, Office of Public Health. As a result of a budgetary shortfall, the department has determined that it is necessary to reduce the reimbursement for early intervention services for infants and toddlers with disabilities by 25 percent. This action is being taken in order to avoid a budget deficit. It is estimated that implementation of this Emergency Rule will decrease expenditures for early intervention services for infants and toddlers with disabilities by approximately \$1,937,214 for the state fiscal year 2004-2005.

Effective for dates of service on or after February 1, 2005, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing reduces the reimbursement rates by 25 percent for early intervention services for infants and toddlers with disabilities under the Early and Periodic Screening, Diagnosis and Treatment Program.

Title 50

PUBLIC HEALTH MEDICAL ASSISTANCE

Part XV. Services for Special Populations

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

Chapter 81. Early Intervention Services

§8109. Reimbursement

A. The reimbursement for early intervention services rendered to infants and toddlers ages birth to three years shall be the lower of billed charges or 75 percent of the rate (a 25 percent reduction) in effect on January 31, 2005.

AUTHORITY NOTE: Promulgated in 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:

Implementation of the provisions of this Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services. Interested persons may submit written comments to Ben A. Bearden at the 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.

Frederick P. Cerise, M.D., M.P.H.
Secretary

0502#041

DECLARATION OF EMERGENCY

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

**Targeted Case Management Services
(LAC 50:XV.10701)**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing hereby amends LAC 50:XV.Chapter 107 under 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 the 2004-2005 General Appropriation Act, which states, "The Secretary shall implement reductions in the Medicaid program as necessary to control expenditures to the level approved in this schedule. The Secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening, and utilization review, and other measures as allowed by federal law." This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953.B(1) et seq., and shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repromulgated the Rules governing optional targeted case management services under the Medicaid Program for inclusion in the Louisiana Administrative Code (*Louisiana*

Register, Volume 30, Number 5). The provisions governing targeted case management services for infants and toddlers who are age birth through 36 months were included in the May 20, 2004 Rule. As a result of a budgetary shortfall, the bureau now proposes to reduce reimbursement for targeted case management services for infants and toddlers by 25 percent. This action is being taken in order to avoid a budget deficit. It is estimated that implementation of this Emergency Rule will decrease expenditures for targeted case management services for infants and toddlers by approximately \$645,738 for the state fiscal year 2004-2005.

Effective for dates of service on or after February 1, 2005, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing reduces the reimbursement for targeted case management services for infants and toddlers.

Title 50

PUBLIC HEALTH MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 7. Targeted Case Management

Chapter 107. Reimbursement

§10701. Reimbursement

A. - B.2. ...

C. Effective for dates of service on or after February 1, 2005, the reimbursement rate for targeted case management services for infants and toddlers shall be 75 percent of the rate (a 25 percent reduction) in effect on January 31, 2005.

AUTHORITY NOTE: Promulgated in 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 30:1040 (May 2004), amended LR 31:

Implementation of the provisions of this Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services. Interested persons may submit written comments to Ben A. Bearden at the 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.

Frederick P. Cerise, M.D., M.P.H.
Secretary

0502#040

DECLARATION OF EMERGENCY

**Department of Social Services
Office of Family Support**

**Food Stamp Program Standard and Basic Utility Allowance
(LAC 67:III.1965 and 1966)**

The Department of Social Services, Office of Family Support, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to amend LAC 67:III, Subpart 3, effective February 1, 2005. This Rule shall remain in effect for a period of 120 days.

Pursuant to Public Law 107-171, The Food Stamp Reauthorization Act of 2002, the agency is amending §§1965 and 1966 to comply with mandates issued by the

United States Department of Agriculture, Food and Nutrition Service. Section 4104 of P.L. 107-171 authorizes changes that simplify the application of the standard utility allowance (SUA) and the basic utility allowance (BUA) as it relates to food stamp households residing in public housing, using a shared utility meter, and paying excess utility costs. These households shall now be allowed to claim the full SUA as a shelter deduction if heating or cooling costs are incurred, or the full BUA as a shelter deduction if heating or cooling costs are not incurred.

Emergency action in this matter is necessary as failure to promulgate the Rule could result in the imposition of sanctions or penalties by the USDA, Food and Nutrition Service, the governing authority of the Food Stamp Program in Louisiana.

Title 67

SOCIAL SERVICES

Part III. Family Support

Subpart 3. Food Stamps

Chapter 19. Certification of Eligible Households

Subchapter I. Income and Deductions

§1965. Standard Utility Allowance (SUA)

A. ...

B. Effective February 1, 2005, households living in public housing with shared meters that are only charged for excess utilities shall use the SUA if heating or cooling costs are incurred.

C. ...

AUTHORITY NOTE: Promulgated in accordance with F.R. 47:51551 et seq., 7 CFR 272 and 273.9, P.L. 104-193, P.L. 107-171.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 9:64 (February 1983), amended by the Department of Social Services, Office of Family Support, LR 20:860 (August 1994), LR 20:991 (September 1994), LR 20:1363 (December 1994), LR 21:188 (February 1995), LR 23:82 (January 1997), LR 24:108 (January 1998), LR 29:606 (April 2003), LR 31:

§1966. Basic Utility Allowance (BUA)

A. Households which do not incur heating or cooling costs separate and apart from their rent or mortgage use a mandatory single Basic Utility Allowance (BUA). To be eligible, a household must be billed on a regular basis for utility costs. The full basic utility allowance shall be allowed to all parties who contribute to the utility costs when the household shares a residence and utility costs with other individuals.

B. Effective February 1, 2005, households living in public housing with shared meters that are only charged for excess utilities shall use the BUA if heating or cooling costs are not incurred.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and P.L. 107-171.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:108 (January 1998), LR 29:606 (April 2003), LR 31:

Ann S. Williamson
Secretary

0502#028

Rules

RULE

Department of Agriculture and Forestry Livestock Sanitary Board

Public Livestock Auction Charters (LAC 7:XXI.111)

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry has amended regulations regarding livestock auction market requirements.

The Department of Agriculture and Forestry has amended these rules and regulations to allow greater flexibility in the issuing of Public Livestock Auction Charters. These changes will also allow more livestock sales on the same day of the week thereby providing the public more opportunities to market their livestock when the classes and types of livestock are significantly different such that sellers, buyers and sales companies are positively and not adversely impacted.

These Rules comply with and are enabled by R.S. 3:662, R.S. 3:665, R.S. 3:2221 and R.S. 3:2093.

Title 7

AGRICULTURE AND ANIMALS

Part XXI. Diseases of Animals

Chapter 1. General Provisions

§111. Livestock Auction Market Requirements

A. No person shall operate a livestock auction without first obtaining a livestock auction market permit from the board. Any person operating a livestock auction market without a valid livestock auction permit will be in violation of this regulation and subject to prosecution.

B. Conditions for Issuing a Livestock Auction Market Permit

1. That proper bond has been posted with the board as required by R.S. 3:565, or it is properly bonded under the U.S. Packers and Stockyards Act.

2. The livestock auction market must provide the following:

a. adequate and sanitary housing for use of state-federal personnel to conduct tests, including the rivanol test for brucellosis. This will include running water, adequate lighting, sanitary plumbing facilities, heating and cooling when necessary and refrigeration for biologics if the quantity to be kept on hand will warrant it. Otherwise, state or federal personnel will furnish his own portable refrigeration;

b. separate pens for holding brucellosis reactors;

c. adequate facilities and personnel to separate and restrain livestock to enable the auction veterinarian and/or representatives of the Livestock Sanitary Board to carry out the requirements of this regulation.

3. The auction operator agrees to operate the sale in conformity with the requirements of this regulation.

4. The day of the week approved by the board for the conduct of the sale must be established prior to the issuance of the charter.

a. In the application for charter, the applicant shall specify the day(s) of the week on which he desires to conduct sales.

b. No requested sales day shall be approved for any applicant if any established, chartered auction market(s) located within a 50-mile radius of the applicant has received prior board approval for the conduct of a sale on the same day of the week, provided that the board may approve more than one sale on the same day of the week within 50 miles of each other if the board finds that the types of livestock being sold at each sale are substantially different and neither sale would adversely affect the other.

B.4.c. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:662, R.S. 3:665, R.S. 3:2221, and R.S. 3:2093.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Livestock Sanitary Board, LR 11:233 (March 1985), amended LR 11:615 (June 1985), amended by the Department of Agriculture and Forestry, Livestock Sanitary Board, LR 17:30 (January 1991), LR 31:419 (February 2005).

Bob Odom
Commissioner

0502#055

RULE

Department of Agriculture and Forestry Seed Commission

Seed Certification Standards (LAC 7:XIII.125 and 143)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and R.S. 3:1433, the Department of Agriculture and Forestry, Office of the Louisiana Seed Commission, has amended regulations governing definitions and the fee structure for certified seed making it consistent throughout the industry.

The Louisiana Seed Commission has amended regulations regarding the fee structure for certified seed making it more consistent throughout the industry. Certification fees are currently assessed on a per tag basis, being one tag per container regardless of the size of the container. (Container sizes can range from 50-2000 pounds.) These standards require that seed certification fees be assessed on a per weight unit basis, with the amount of the weight units being established by the seed commission, and based on a common industry accepted packaging weight and specified within the certification standards. In addition, the term "weight unit" will be defined in the seed certification definitions as a result of the changes.

These Rules are enabled by R.S. 3:1431 and 3:1433.

Title 7
AGRICULTURE AND ANIMALS

Part XIII. Seeds

Chapter 1. Louisiana Seed Law

Subchapter B. General Seed

§125. Definitions

* * *

Weight Unit Unit of measure, designated by the Louisiana Seed Commission, based on the most common industry accepted packaging weight in pounds for a specific commodity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1431 and R.S. 3:1433.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:564 (November 1982), amended by the Department of Agriculture and Forestry, Seed Commission, LR 12:825 (December 1986), LR 20:642 (June 1994), LR 31:420 (February 2005).

§143. Fees

A. - C. ...

D. Fees for certified seed shall be \$0.16 per weight unit and be calculated on the total weight units in the certifiable lot. The number of weight units for a particular lot of seed shall be reported when the certified sample is taken, and are payable upon request for certified tags.

1. The weight unit for rice is 100 pounds; all other commodity weight units are 50 pounds.

E. Fees for Sweet Potatoes

1. The fee for greenhouse inspections of virus-tested sweet potato plants and mini-roots shall be \$50 per crop year.

2. A fee of \$0.05 per 1,000 plants will be collected for each 1,000 sweet potato plants inspected for certification purposes.

F. Fees for Bulk Seed Certification

1. The fee for the issuance of a bulk certified seed sales certificate shall be \$0.16 per weight unit.

G. - I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1433.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:566 (November 1982), amended LR 10:495 (July 1984), amended by the Department of Agriculture and Forestry, Seed Commission, LR 12:825 (December 1986), LR 14:604 (September 1988), LR 16:847 (October 1990), LR 26:235 (February 2000), LR 31:420 (February 2005).

Bob Odom
Commissioner

0502#054

RULE

**Department of Economic Development
Office of the Secretary**

Governor's Economic Development
Rapid Response Program
(LAC 13:V.Chapter 2)

The Louisiana Department of Economic Development, Office of the Secretary, pursuant to the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), has

adopted the following Rules of the Governor's Economic Development Rapid Response Program.

The Department of Economic Development, Office of the Secretary, has found a need to provide rules regarding the creation and regulation of the Governor's Economic Development Rapid Response Program to provide for immediate funding of all or a portion of economic development projects in order to successfully secure the creation or retention of jobs by a business entity in Louisiana under such circumstances as may be determined by the Secretary of Economic Development and the Governor of Louisiana. Without these Rules the state of Louisiana may suffer the loss of business investment and economic development projects creating or retaining jobs that would improve the standard of living and enrich the quality of life for citizens of this state.

Title 13

ECONOMIC DEVELOPMENT

Part V. Office of the Secretary

**Chapter 2. Governor's Economic Development
Rapid Response Program**

§201. Purpose

A. The purpose of the program is to provide for immediate funding of all or a portion of economic development projects in order to successfully secure the creation or retention of jobs by a business entity in Louisiana under such circumstances as may be determined by the Secretary of Economic Development and the Governor of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 31:420 (February 2005).

§203. Definitions

A. The following definitions shall be applicable to this program:

Applicant(s) The company or business entity, that pursuant to applicable Louisiana law, is duly authorized to do business in Louisiana and is in good standing as certified by the office of the Louisiana Secretary of State, and/or any public entity requesting financial assistance from LED under this program that represents the set of circumstances through which funding may be applicable under these rules.

Award Funding of financial assistance, which may include loan guaranties, for eligible applicants under this program.

Award Agreement The contract between the company and/or the public entity, and LED through which, by cooperative endeavor, loan guaranty agreement, or otherwise, the parties set forth the terms, conditions and performance objectives of the award provided pursuant to these rules.

Company A company or business entity, duly authorized to do business in Louisiana and in good standing as certified by the Louisiana Secretary of State, that pursuant to these rules may be eligible to seek the funding of a project.

Department The Louisiana Department of Economic Development.

Economic Development Project The undertaking for which an award is granted that, under the circumstances presented, provides the opportunity for immediate funding

of a project or portion of a project that will serve to finalize the commitment of a business entity to either the creation or retention of jobs in Louisiana.

LED The Louisiana Department of Economic Development.

Program The Governor's Economic Development Rapid Response Program that is undertaken by LED, pursuant to these rules and an award agreement with the applicant(s) that serves the purposes of obtaining or retaining an Economic Development Project.

Project Economic activity that, in whole or in part, as determined by the Secretary of Economic Development and the Governor of Louisiana, will result in the creation or retention of jobs and for which assistance is requested under this program as a decisive influence in the decision of an entity to locate in Louisiana, maintain or expand its Louisiana operations, or increase its capital investment in Louisiana in such a manner as will create or retain jobs.

Public Entity The public or quasi-public entity that pursuant to these rules, may be eligible to seek funding or a loan guaranty for a project or that may, with a company, apply for funding or a loan guaranty pursuant to these rules or that, pursuant to the request of LED, may be responsible for engaging in the award agreement and pursuant thereto, for the performance and oversight of the project and for supervising with LED the company's compliance with the terms, conditions and performance objectives of the award agreement.

Secretary The Secretary of the Department of Economic Development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 31:420 (February 2005).

§205. General Principles

A. The following general principles will direct the administration of the Governor's Economic Development Rapid Response Program.

1. Awards are not to be construed as an entitlement for companies locating or located in Louisiana and the secretary and governor have the discretion to determine whether or not each particular application meets the primary criteria for the award as provided herein, and in all such circumstances, the exercise of that discretion shall be deemed to be a final determination of award status.

2. The economic benefit of the award to the state must equal or exceed the value of the award to the recipient.

3. The immediate nature of the award, and the competitive circumstances, as well as the need for and immediate use of the funds or loan guaranty granted pursuant to the award must reasonably be expected to be the significant factor in a company's location, investment, retention and/or expansion decisions, and the award agreements entered into pursuant to this program shall reflect a commitment by the recipient of the award to the creation and retention of jobs and other economic consequences as represented in the application for the award and shall include such provisions as will protect the state's investment in the award in the event that the recipient of the award fails to meet its representations.

4. The state anticipates negotiating with each company seeking an award based on the individual merits of each project, with the goal of seeking the best return on investment for the state's citizens over the longest possible period of time.

5. Contracts for awards will contain "clawback" (or refund) provisions to protect the state in the event of a default.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 31:421 (February 2005).

§207. Eligibility

A. An eligible application for the award must meet the general principles set forth above and the criteria set forth below.

B. A company shall be considered ineligible for this program if it has pending or outstanding claims or liabilities relative to failure or inability to pay its obligations, including state or federal taxes, a bankruptcy proceeding, or if it has pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit, or if the company has another contract with LED in which the company is in default and/or is not in compliance.

C.1. Businesses not eligible for awards under this program are:

- a. retail business operations;
- b. real estate developments;
- c. hospitality operations; or
- d. gaming operations.

2. This provision shall not apply, however, to wholesale, storage warehouse or distribution centers; catalog sales or mail-order centers; home-office headquarters or administrative office buildings; even though such facilities are related to the above business enterprises, provided that retail sales, hospitality services and gaming activities are not provided directly and personally to individuals in any such facilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 31:421 (February 2005).

§209. Criteria

A. These rules seek to maximize both the economic development from a particular award pursuant to this program and to more efficiently utilize taxpayer money in pursuing the goals of economic development.

B. Among the factors that may be taken into account in the review of award requests are the following:

1. actual local governmental commitment to the project (including sharing of responsibility for the company's compliance with the terms and conditions of the award);

2. availability of other federal, state, local or private funding programs for the project;

3. jobs created, jobs retained, company investment prior to the request for the project and company commitment to match funds that will equal or exceed the amount of the grant;

4. company membership in and utilization of cooperative organizations for industry best practices and improvement;

5. evaluation of overall industry performance in the context of the goals of *Louisiana: Vision 2020*;

6. compelling evidence that the award, if granted, will retain or create jobs and that the award, when committed and implemented, needs immediate funding and is the final necessary commitment to secure the project;

7. the period of time that the company will commit to maintain its new and/or retained jobs; and

8. the terms of the "clawback" (or refund) provisions, in the event of a default.

C. Representation as to the applicant's need for the funds, as well as the ability to put the funds to use after the award is granted will also be an important consideration in the grading of a particular application. Entry into a contractual agreement and the use of the funds within a specified period after the award is granted will be a factor in the department's recommendation to the governor as to conditions for the award.

D. The department will pursue a policy of negotiation of the award with the award applicant in order to assure that only necessary funds that are supported by evidence of need, availability and use, as well as commitment to, and likely success of the project, will arise from the final approval of the project in accordance with departmental recommendations upon which the award is conditioned and will be administered by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 31:421 (February 2005).

§211. Application Procedure

A. The applicant(s) must submit an application to LED which shall contain, but not be limited to, the following:

1. an overview of the company, its history, and the business climate in which it operates, including audited or certified financial statements and business projections;

2. preliminary or final construction, operation or other plans and a timetable for the project, including the time period for which the rapid response funding is necessary;

3. evidence as to the need for immediate funding;

4. a detailed description of the expenditure of funds sought for the project;

5. evidence of the number, types and compensation levels of jobs to be created, and/or the number, types and compensation levels of jobs to be retained by the company in connection with the project, and the amount of capital investment to be made for the project;

6. details of the health insurance coverage that is or will be offered to employees at all levels of the company;

7. the period of time for which the company will commit to maintain the new and/or retained jobs;

8. the application must demonstrate adherence to and overall consistency with the general principles and criteria set forth above; and

9. the application is to set forth facts and representations that in addition to those required by Paragraphs 1 through 8 above, fulfill the general principles of §205, the eligibility requirements under §207, and meet

the criteria set forth in §209 above, in order to qualify for an award under this program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 31:422 (February 2005).

§213. Submission and Review Procedure

A. Applicants must submit their completed application to LED. Submitted applications will be reviewed and evaluated by LED staff. Input may be required from the applicant, cluster directors, other staff of the Department of Economic Development and other state agencies as needed in order to evaluate the project in the context of these rules and with respect to the overall economic well-being of the state and local communities. LED may determine that advice of a third party may be appropriate to its analysis of the application and may undertake such a review as part of this procedure.

B. An economic cost-benefit analysis of the project, including an analysis of the direct and indirect net economic impact and fiscal benefits to the state and local communities will be prepared by LED and must establish that the award hereunder is in accordance with the requirements of Article VII, Section 14 of the Louisiana Constitution.

C. Upon determination that an application meets the general principles of §205, the eligibility requirements under §207, and meets the criteria set forth for this program under §209, LED staff will then make a recommendation to the governor. The application will then be reviewed and approved or rejected by the governor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 31:422 (February 2005).

§215. General Award Provisions

A. Agreement resulting from the expedited procedures for the award shall demonstrate the intent of the company, the public entity, and LED to enter into an Award Agreement consistent with the Constitution and laws of the State of Louisiana and with these Rules.

1. An Award Agreement will be executed between LED and the applicant, and may include as a party the public entity through which the funding is to be administered. The agreement will specify the performance objectives expected of the company and/or the public entity and the compliance requirements to be enforced in exchange for state assistance, including, but not limited to, commitments as to job retention and/or to time lines for investment and job creation. Under the agreement, the public entity or LED will oversee the progress of the project. LED will disburse funds to the public entity and/or company in a manner determined by LED and there shall be appropriate securitization of the award in a manner consistent with normal commercial practices.

2. Eligible project costs may include an advance of funds to provide the necessary commitment that will, in the opinion of the LED and governor, provide for the project and may include matters that in whole or in part provide for engineering and architectural expenses; site acquisition costs; site preparation costs; construction expenses; building materials; office expenses including furniture, fixtures,

computers, consumables, transportation equipment, rolling stock or equipment; relocation expenses; training expenses, including pre-employment training, assessments, classroom training, on-the-job training, and other justifiable training expenses; and any other costs. Commitment to funding of these costs may be made, provided that the entity receiving these funds shall comply with the Public Bid Laws to the extent that such laws are applicable.

3. Project costs ineligible for award funds include, but are not limited to, matters such as the refinancing of existing debt, public or private, and expenses already approved for funding through the General Appropriations Bill, or for cash approved through the Capital Outlay Bill, or approved for funding through the state's capital outlay process for which the Division of Administration and the Bond Commission have already approved a line of credit and the sale of bonds.

4. LED and/or the governor, may limit the amount of awards to effect the best allocation of resources based upon the number of projects requiring funding and the availability of program funds.

5. Award funds will be available to the public entity and/or company on a reimbursement basis following submission of required documentation to LED as set forth in the Award Agreement between the parties.

6. Award funds will not be available for disbursement until:

a. The LED and the applicant(s) have entered into an Award Agreement that is in fulfillment of these Rules and is in accordance with the representations made by the applicant(s) for the award; and

b. Confirmation is received that all closing conditions specified in the Award Agreement and any other necessary preconditions to the funding of the award or the implementation of the project have been satisfied.

7. The award recipient shall be required to submit progress reports, describing the progress toward the performance objectives specified in the Award Agreement. Progress reports shall include a review and certification of the company's hiring records and the extent of the company's compliance with contract employment commitments.

8. In the event a party to the Award Agreement fails to meet its performance objectives specified in its Award Agreement with LED, LED shall retain the rights to withhold award funds, modify the terms and conditions of the award, and to reclaim disbursed funds from the company and/or public entity in an amount commensurate with the scope of the unmet performance objectives and the foregone benefits to the state or as may be otherwise provided by the Award Agreement between the parties.

9. In the event an applicant or other person is reasonably believed to have filed a false statement in its application or in a progress report or other filing, the LED shall immediately notify the District Attorney of the Parish of East Baton Rouge and may also notify any other appropriate law enforcement personnel so that an investigation may be undertaken with respect to the application of state funds to the project.

10. LED shall retain the right to require and/or conduct financial and performance audits of a project, including all relevant records, accounts and documents of the company and the public entity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 31:422 (February 2005).

Michael J. Olivier
Secretary

0502#037

RULE

Board of Elementary and Secondary Education

Bulletin 111 Louisiana School, District,
and State Accountability System
(LAC 28:LXXXIII.3501, 4310, and 4313)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 111 Louisiana School, District, and State Accountability System* (LAC 28:LXXXIII). Act 478 of the 1997 Regular Legislative Session called for the development of an accountability system for the purpose of implementing fundamental changes in classroom teaching by helping schools and communities focus on improved student achievement. The state's accountability system is an evolving system with different components. These changes take advantage of new flexibility in guidance for No Child Left Behind and address situations that were not considered when the accountability policy was initially written.

Title 28

EDUCATION

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

Chapter 35. Inclusion of Alternative Education Students

§3501. Option Choices

A. ...

B. Any child who is in the custody of the office of juvenile services, Department of Public Safety and Corrections, as a result of being an adjudicated delinquent or in need of supervision by a court and assigned by the office of juvenile services to a community-based program or facility, as provided for in R.S. 17:100.1, shall be provided educational services pursuant to R.S. 17:100.1.

1. For those LEA's providing educational services directly to students in these programs/facilities, the LEA must designate the program/facility as an Option 1 or Option 2 alternative school, and the students' assessment, dropout and attendance results shall be included in the LEA's data for district accountability purposes.

2. Subject to the requirements of R.S. 17:100.1(B), any city or parish school board may contract for the provision of educational services for children described in Subsection B of this Section.

a. If an LEA does satisfy its educational obligations by contract, the program/facility shall be designated as an Option 2 alternative school and will receive its own SPS.

b. The assessment, dropout and attendance results for these students shall not be included in the local school district's data for district accountability purposes.

c. The assessment, dropout and attendance results for these students shall be included in a "R.S. 17:100.1

school district" for accountability purposes. The department shall have the discretion to create multiple "R.S. 17:100.1 school districts" so that the accountability data accurately reflects the operation of the various programs/facilities.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2753 (December 2003), amended LR 31:423 (February 2005).

Chapter 43. District Accountability

§4310. Subgroup Component AYP (Adequate Yearly Progress)

A. District Subgroup Component Indicators

1. Each district shall be evaluated on the subgroup component at three different levels (grade-clusters); elementary (K-5), middle (6-8), and high school (9-12). A grade-cluster shall pass the subgroup component provided that each subgroup of students meets the subgroup component, and the grade-cluster, as a whole, meets the criteria for status or improvement on the additional academic indicator. A district shall pass the subgroup component provided that each grade-cluster does not fail the subgroup component.

a. - c. ...

d. For the non-proficient reduction portion of the safe harbor test, a comparison of current year assessment data to the previous year assessment data shall be used. For the additional academic indicator check for the safe harbor test and for the whole grade-cluster check, attendance and dropout data from two years prior will be compared to data from three years prior.

A.1.e. - B.1.b.ii. ...

2. For analyses involving the additional academic indicator, all students in each subgroup in the grade-cluster shall be included.

3. Each subgroup (African American, American Indian/Alaskan Native, Asian, Hispanic, White, Economically Disadvantaged, Limited English Proficient, Students with Disabilities, and All Students) within each district shall be evaluated separately on ELA and mathematics.

a. In calculating the subgroup component for a grade-cluster, the alternate academic achievement standards for students participating in LAA will be used, provided that the percentage of LAA students scoring proficient at the district level does not exceed 1.0 percent of all students in the grades assessed. If the district exceeds the 1.0 percent cap, the district shall request a waiver. If the district fails to request the waiver or if the district requests the waiver but it is determined by LDE that ineligible students were administered LAA, the students that exceed the cap or that are ineligible shall be assigned a zero on the assessment and considered non-proficient.

B.3.b. - C.3.(Table) ...

4. A 99 percent confidence interval shall be used when evaluating whether subgroups within a grade-cluster have attained the Annual Measurable Objective (AMO).

C.5. - D.2.a.i. ...

b. the subgroup:

i. achieves a 90 percent non-dropout rate (9-12) or attendance rate (K-5, 6-8). (A 99 percent confidence interval is applied to the 90 percent attendance rate and 90 percent non-dropout rate check); or

ii. makes at least 0.1 percent improvement in non-dropout rate (9-12) or attendance rate (K-5, 6-8) from the previous year.

3. The non-dropout rate shall be evaluated for students in grade 9 and above.

4. Subgroups passing the participation rate test and achieving safe harbor shall be considered as having passed the subgroup component.

E. Failing the Subgroup Component

1. A grade-cluster shall fail the subgroup component if ANY subgroup within that grade-cluster fails the participation rate test, the ELA or math AMO status test and the safe harbor test.

2. A grade-cluster in which all subgroups have passed the subgroup component must also have the grade-cluster pass the additional academic indicator:

a. achieved a 90 percent non-dropout rate (9-12) or attendance rate (K-5, 6-8) (a 99 percent confidence interval is applied to the 90 percent non-dropout or attendance rate check); or

b. made at least 0.1 percent improvement in non-dropout rate (9-12) or attendance rate (K-5, 6-8) from the previous year.

NOTE: If a grade-cluster in which all subgroups have passed the subgroup component does not pass the additional academic indicator, it shall not pass the subgroup component.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1447 (July 2004), amended LR 31:424 (February 2005).

§4313. Corrective Actions

A. - B.1. ...

C. Districts that receive a DRI Index label of Unresponsive and/or fail to achieve AYP in the subgroup component in the same subject for a second consecutive year shall write District Improvement Plans based on the prior years' self-assessments and submit those plan to the LDE.

1. The DOE shall review each District Improvement Plan.

2. The DOE may recommend that BESE schedule a district dialogue with the district.

D. Districts that receive a DRI Index label of Unresponsive and/or fail to achieve AYP in the subgroup component in the same subject for a third consecutive year shall be audited by the LDE. The audit shall include academic, fiscal, and support services.

E. BESE shall take action on the findings of the prior years audit for districts that receive a DRI Index label of Unresponsive and/or fail to achieve AYP in the subgroup component in the same subject for a fourth consecutive year. Actions taken shall be dependent upon whether identification was through the DRI label or the subgroup component.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2757 (December 2003), amended LR 30:1449 (July 2004), LR 31:424 (February 2005).

0502#004

Weegie Peabody
Executive Director

RULE

Board of Elementary and Secondary Education

Bulletin 746 **C** Louisiana Standards for State Certification of School Personnel **C** PRAXIS Exams and Passing Scores for Louisiana Certification (LAC 28:I.903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education amended *Bulletin 746 C Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:I.903.A. This policy specifies the specific Praxis exam and passing score for certification in Middle School English/Language Arts. This action continues the board's alignment of the Praxis testing policies of the No Child Left Behind Act of 2001.

**Title 28
EDUCATION**

**Part I. Board of Elementary and Secondary Education
Chapter 9. Bulletins, Regulations, and State Plans
Subchapter A. Bulletins and Regulations**

§903. Teacher Certification Standards and Regulations

A. Bulletin 746

* * *

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 1:183 (April 1975), amended LR 1:311 (July 1975), LR 1:399 (September 1975), LR 1:541 (December 1975), LR 28:2505 (December 2002), LR 29:117 (February 2003), LR 29:119 (February 2003), LR 29:121 (February 2003), LR 31:425 (February 2005).

* * *

Middle School Certification Testing Policy

For Louisiana middle school certified teachers to have "highly qualified" status, the state's middle school PRAXIS content exam certification requirements must conform with the No Child Left Behind Act of 2001. The Act specifies that middle school teachers must have passed a content specific exam for each core academic content area in which the teacher teaches.

The following exam is specified for use by applicants seeking certification for Middle School: English/Language Arts.

Middle School Subject Area	Exam Number	Cut Score
English/Language Arts	0049	160

Weegie Peabody
Executive Director

0502#005

RULE

**Department of Environmental Quality
Office of Environmental Assessment**

Cooling Water Intake Structures at Existing Phase II Facilities
(LAC 33:IX.2501, 2707, 3113, 4701, 4703, 4705, 4707, 4709, 4719, 4731, 4733, 4735, 4737, 4739, 4741, 4743, 4745, 4747, 5911, and 7103)(WQ057*)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Water Quality regulations, LAC 33:IX.2501, 2707, 3113, 4701, 4703, 4705, 4707, 4709, 4719, 4731, 4733, 4735, 4737, 4739, 4741, 4743, 4745, 4747, 5911, and 7103 (Log #WQ057*).

This Rule is identical to federal regulations found in 69 FR 41682-41693, No. 131 (July 9, 2004), which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3550 or Box 4314, Baton Rouge, LA 70821-4314. No fiscal or economic impact will result from the Rule; therefore, the rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

This Rule incorporates EPA's Phase II of Section 316(b) of the Clean Water Act, establishing requirements and procedures for implementing those requirements, according to the location, design, capacity, and construction of cooling water intake structures located at existing power producing facilities. The structures regulated withdraw 50 million gallons or more per day of water for cooling purposes. This Rule is designed to minimize the environmental impact of cooling water intake structures by reducing the number of aquatic organisms lost as a result of water withdrawals associated with these structures. Current citations in the regulations are also being changed to reference new changes implemented by this rule package. The basis and rationale for this Rule are to protect the waters of the state and to mirror the federal regulations.

This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This Rule has no known impact on family formation, stability, and autonomy as described in R.S.49:972.

**Title 33
ENVIRONMENTAL QUALITY**

Part IX. Water Quality

Subpart 2. The Louisiana Pollutant Discharge Elimination System (LPDES) Program

Chapter 25. Permit Application and Special LPDES Program Requirements

§2501. Application for a Permit

A. - Q.15. ...

R. Applications for Facilities with Cooling Water Intake Structures

1. Application requirements for facilities with cooling water intake structures are as follows.

a. New Facilities with New or Modified Cooling Water Intake Structures. New facilities with cooling water intake structures, as defined in LAC 33:IX.Chapter 47.Subchapter A, shall submit to the state administrative authority for review the information required under Paragraphs R.2, 3, and 4 of this Section and LAC 33:IX.4713. Requests for alternative requirements under LAC 33:IX.4711 shall be submitted with the permit application.

b. Phase II Existing Facilities. Phase II existing facilities, as defined in LAC 33:IX.Chapter 47.Subchapter B, shall submit to the state administrative authority for review information required under Paragraphs R.2, 3, and 5 of this Section and all applicable provisions of LAC 33:IX.4739 as part of their application, except for the proposal for information collection, which shall be provided in accordance with LAC 33:IX.4739.B.1.

2. - 4.h. ...

5. Cooling Water System Data. Phase II existing facilities, as defined in LAC 33:IX.Chapter 47.Subchapter B, shall provide the following information for each cooling water intake structure they use:

a. a narrative description of the operation of the cooling water system, including:

i. its relationship to cooling water intake structures;

ii. the proportion of the design intake flow that is used in the system;

iii. the number of days of the year the cooling water system is in operation; and

iv. seasonal changes in the operation of the system, if applicable; and

b. design and engineering calculations prepared by a qualified professional and supporting data to support the description required by Subparagraph R.5.a of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:723 (June 1997), amended by the Office of the Secretary, LR 25:661 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2552 (November 2000), LR 26:2756 (December 2000), LR 27:45 (January 2001), LR 28:465 (March 2002), LR 28:1766 (August 2002), LR 29:1462 (August 2003), repromulgated LR 30:230 (February 2004), amended by the Office of Environmental Assessment, LR 30:2028 (September 2004), LR 31:425 (February 2005).

Chapter 27. LPDES Permit Conditions

§2707. Establishing Limitations, Standards, and Other Permit Conditions

A.1. - B.2. ...

3. Requirements applicable to cooling water intake structures under Section 316(b) of the CWA, in accordance with LAC 33:IX.Chapter 47.Subchapters A and B.

C. - S. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:724 (June 1997), LR 23:1523 (November 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2282 (October 2000), LR 26:2764 (December 2000), LR 28:469 (March

2002), LR 28:1767 (August 2002), repromulgated LR 30:230 (February 2004), amended by the Office of Environmental Assessment, LR 31:426 (February 2005).

Chapter 31. General LPDES Program Requirements

§3113. Public Notice of Permit Actions and Public Comment Period

A. - D.1.g. ...

h. requirements applicable to cooling water intake structures under Section 316(b) of the CWA, in accordance with LAC 33:IX.Chapter 47.Subchapters A and B; and

D.1.i. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Water Pollution Control Division, LR 23:725 (June 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2554 (November 2000), LR 28:473 (March 2002), LR 28:1767 (August 2002), repromulgated LR 30:231 (February 2004), amended by the Office of Environmental Assessment, LR 31:426 (February 2005).

Chapter 47. Criteria Applicable to Cooling Water Intake Structures under Section 316(b) of the Act

NOTE: This Chapter is written in a special format to make it easier to understand the regulatory requirements. Like other department and USEPA regulations, this establishes enforceable legal requirements. For this Chapter, *I* and *you* refer to the owner/operator.

Subchapter A. Requirements Applicable to Cooling Water Intake Structures for New Facilities under Section 316(b) of the Act

§4701. What Are the Purpose and Scope of This Subchapter?

A. This Subchapter establishes requirements that apply to the location, design, construction, and capacity of cooling water intake structures at new facilities. The purpose of these requirements is to establish the best technology available for minimizing adverse environmental impact associated with the use of cooling water intake structures. These requirements are implemented through LPDES permits issued in accordance with Section 402 of the CWA, under the assumption of the NPDES program.

B. This Subchapter implements Section 316(b) of the CWA for new facilities. Section 316(b) of the CWA provides that any standard established in accordance with Section 301 or 306 of the CWA and applicable to a point source shall require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact.

C. ...

D. Nothing in this Subchapter shall be construed to preclude or deny the right of any state or political subdivision of a state or any interstate agency under Section 510 of the CWA to adopt or enforce any requirement with respect to control or abatement of pollution that is more stringent than those required by federal law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:1767 (August 2002), repromulgated LR 30:231 (February 2004), amended by the Office of Environmental Assessment, LR 31:426 (February 2005).

§4703. Who is Subject to This Subchapter?

A. This Subchapter applies to a new facility if it:

A.1. - C. ...

D. This Subchapter does not apply to facilities that employ cooling water intake structures in the offshore and coastal subcategories of the oil and gas extraction point source category, as defined under 40 CFR 435.10 and 40 CFR 435.40.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:1767 (August 2002), repromulgated LR 30:231 (February 2004), amended by the Office of Environmental Assessment, LR 31:427 (February 2005).

§4705. When Must I Comply with This Subchapter?

A. You must comply with this Subchapter when an LPDES permit containing requirements consistent with this Subchapter is issued to you.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:1768 (August 2002), repromulgated LR 30:231 (February 2004), amended by the Office of Environmental Assessment, LR 31:427 (February 2005).

§4707. What Special Definitions Apply to This Subchapter?

Annual Mean Flow of Tidal River ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:1768 (August 2002), amended LR 29:2375 (November 2003), repromulgated LR 30:231 (February 2004), amended by the Office of Environmental Assessment, LR 31:427 (February 2005).

§4709. As an Owner or Operator of a New Facility, What Must I Do to Comply with This Subchapter?

A. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:1769 (August 2002), amended LR 29:2375 (November 2003), repromulgated LR 30:231 (February 2004), amended by the Office of Environmental Assessment, LR 31:427 (February 2005).

§4719. What Must the State Administrative Authority Do to Comply with the Requirements of This Subchapter?

A. - B.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:1774 (August 2002), repromulgated LR 30:232 (February 2004), amended by the Office of Environmental Assessment, LR 31:427 (February 2005).

Subchapter B. Requirements Applicable to Cooling Water Intake Structures for Phase II Existing Facilities under Section 316(b) of the Act

§4731. What Are the Purpose and Scope of This Subchapter?

A. This Subchapter establishes requirements that apply to the location, design, construction, and capacity of cooling water intake structures at existing facilities that are subject to this Subchapter (i.e., Phase II existing facilities). The purpose of these requirements is to establish the best technology available for minimizing adverse environmental impact associated with the use of cooling water intake structures. These requirements are implemented through LPDES permits issued under Section 402 of the Clean Water Act (CWA), under the assumption of the NPDES program.

B. Existing facilities that are not subject to requirements under Subchapter A or B of this Chapter shall meet requirements under Section 316(b) of the CWA determined by the state administrative authority on a case-by-case, best professional judgment (BPJ) basis.

C. **Alternative Regulatory Requirements.** Notwithstanding any other provision of this Subchapter, if a state demonstrates to the administrator that it has adopted alternative regulatory requirements in its NPDES program that will result in environmental performance within a watershed that is comparable to the reductions of impingement mortality and entrainment that would otherwise be achieved under LAC 33:IX.4737, the administrator shall approve such alternative regulatory requirements.

D. Nothing in this Subchapter shall be construed to preclude or deny the right of any state or political subdivision of a state or any interstate agency under Section 510 of the CWA to adopt or enforce any requirement with respect to control or abatement of pollution that is not less stringent than those required by federal law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, LR 31:427 (February 2005).

§4733. What is a Phase II Existing Facility?

A. An *existing facility*, as defined in LAC 33:IX.4735.A, is a Phase II existing facility subject to this Subchapter if it meets each of the following criteria.

1. It is a point source.
2. It uses or proposes to use cooling water intake structures with a total design intake flow of 50 million gallons per day (MGD) or more to withdraw cooling water from waters of the state.
3. As its primary activity, the facility both generates and transmits electric power, or generates electric power but sells it to another entity for transmission.
4. It uses at least 25 percent of the water withdrawn exclusively for cooling purposes, measured on an average annual basis.

B. In the case of a Phase II existing facility that is co-located with a manufacturing facility, only that portion of the combined cooling water intake flow that is used by the Phase II facility to generate electricity for sale to another entity shall be considered for purposes of determining whether the 50 MGD and 25 percent criteria in Paragraphs A.2 and 4 of this Section have been exceeded.

C. Use of a cooling water intake structure includes obtaining cooling water by any sort of contract or arrangement with one or more independent suppliers of cooling water if the supplier withdraws water from waters of the state but is not itself a Phase II existing facility, except as provided in Subsection D of this Section. This provision is intended to prevent circumvention of these requirements by creating arrangements to receive cooling water from an entity that is not itself a Phase II existing facility.

D. Notwithstanding Subsection C of this Section, obtaining cooling water from a public water system or using treated effluent as cooling water does not constitute use of a cooling water intake structure for purposes of this Subchapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, LR 31:427 (February 2005).

§4735. What Special Definitions Apply to This Subchapter?

A. In addition to the definitions provided in LAC 33:IX.2313, the following special definitions apply to this Subchapter.

Adaptive Management Method—A type of project management method where a facility chooses an approach to meeting the project goal, monitors the effectiveness of that approach, and then based on monitoring and any other relevant information, makes any adjustments necessary to ensure continued progress toward the project's goal. This cycle of activity is repeated as necessary to reach the project's goal.

Annual Mean Flow—The average of daily flows over a calendar year.

All Life Stages—Eggs, larvae, juveniles, and adults.

Calculation Baseline—An estimate of impingement mortality and entrainment that would occur at your site assuming that the cooling water system has been designed as a once-through system; the opening of the cooling water intake structure is located at, and the face of the standard 3/8-inch mesh traveling screen is oriented parallel to, the shoreline near the surface of the source water body; and the baseline practices, procedures, and structural configuration are those that your facility would maintain in the absence of any structural or operational controls, including flow or velocity reductions, implemented in whole or in part for the purposes of reducing impingement mortality and entrainment. You may also choose to use the current level of impingement mortality and entrainment as the calculation baseline. The calculation baseline may be estimated using historical impingement mortality and entrainment data from your facility or from another facility with comparable design, operational, and environmental conditions; current biological data collected in the water body in the vicinity of your cooling water intake structure; or current impingement mortality and entrainment data collected at your facility. You

may request that the calculation baseline be modified to be based on a location of the opening of the cooling water intake structure at a depth other than at or near the surface if you can demonstrate to the state administrative authority that the other depth would correspond to a higher baseline level of impingement mortality and/or entrainment.

Capacity Utilization Rate—The ratio between the average annual net generation of power by the facility (in MWh) and the total net capability of the facility to generate power (in MW) multiplied by the number of hours during a year. In cases where a facility has more than one intake structure, and each intake structure provides cooling water exclusively to one or more generating units, the capacity utilization rate may be calculated separately for each intake structure, based on the capacity utilization of the units it services. Applicable requirements under this Subpart would then be determined separately for each intake structure. The average annual net generation should be measured over a five-year period, if available, of representative operating conditions, unless the facility makes a binding commitment to maintain capacity utilization below 15 percent for the life of the permit, in which case the rate may be based on this commitment. For purposes of this Subchapter, the capacity utilization rate applies to only that portion of the facility that generates electricity for transmission or sale using a thermal cycle employing the steam water system as the thermodynamic medium.

Closed-Cycle Recirculating System—A system designed, using minimized make-up and blowdown flows, to withdraw water from a natural or other water source to support contact and/or noncontact cooling uses within a facility. The water is usually sent to a cooling canal or channel, lake, pond, or tower to allow waste heat to be dissipated to the atmosphere and then is returned to the system. (Some facilities divert the waste heat to other process operations.) New source water (make-up water) is added to the system to replenish losses that have occurred due to blowdown, drift, and evaporation.

Cooling Water—Water used for contact or noncontact cooling, including water used for equipment cooling, evaporative cooling tower makeup, and dilution of effluent heat content. The intended use of the cooling water is to absorb waste heat rejected from the process or processes used, or from auxiliary operations on the facility's premises. Cooling water that is used in a manufacturing process either before or after it is used for cooling is considered process water for the purposes of calculating the percentage of a facility's intake flow that is used for cooling purposes in LAC 33:IX.4733.A.4.

Cooling Water Intake Structure—The total physical structure and any associated constructed waterways used to withdraw cooling water from waters of the state. The cooling water intake structure extends from the point at which water is withdrawn from the surface water source up to, and including, the intake pumps.

Design and Construction Technology—Any physical configuration of the cooling water intake structure, or a technology that is placed in the water body in front of the cooling water intake structure, to reduce impingement mortality and/or entrainment. Design and construction technologies include, but are not limited to, location of the intake structure, intake screen systems, passive intake systems, fish diversion and/or avoidance systems, and fish

handling and return systems. Restoration measures are not design and construction technologies for purposes of this definition.

Design Intake Flow The value assigned, during the cooling water intake structure design, to the total volume of water withdrawn from a source water body over a specific time period.

Design Intake Velocity The value assigned, during the design of a cooling water intake structure, to the average speed at which intake water passes through the open area of the intake screen, or other device, upon which organisms might impinge or through which they might be entrained.

Diel Daily and refers to variation in organism abundance and density over a 24-hour period due to the influence of water movement, physical or chemical changes, and changes in light intensity.

Entrainment The incorporation of any life stages of fish and shellfish with intake water flow entering and passing through a cooling water intake structure and into a cooling water system.

Estuary A semi-enclosed body of water that has a free connection with open seas and within which the seawater is measurably diluted with fresh water derived from land drainage. The salinity of an estuary exceeds 0.5 parts per thousand (by mass) but is typically less than 30 parts per thousand (by mass).

Existing Facility Any facility that commenced construction as described in 40 CFR 122.29(b)(4) on or before January 17, 2002, and any modification of, or any addition of, a unit at such a facility that does not meet the definition of a new facility in 40 CFR 125.83.

Freshwater River or Stream A lotic (free-flowing) system that does not receive significant inflows of water from oceans or bays due to tidal action. For the purposes of this regulation, a flow-through reservoir with a retention time of seven days or less shall be considered a freshwater river or stream.

Impingement The entrapment of any life stages of fish and shellfish on the outer part of an intake structure or against a screening device during periods of intake water withdrawal.

Lake or Reservoir Any inland body of open water with some minimum surface area free of rooted vegetation and with an average hydraulic retention time of more than seven days. Lakes or reservoirs might be natural water bodies or impounded streams, usually fresh, surrounded by land or by land and a man-made retainer (e.g., a dam). Lakes or reservoirs might be fed by rivers, streams, springs, and/or local precipitation.

Moribund Dying; close to death.

Natural Thermal Stratification The naturally occurring and/or existing division of a water body into horizontal layers of differing densities as a result of variations in temperature at different depths.

Ocean Marine open coastal waters with a salinity greater than or equal to 30 parts per thousand (by mass).

Once-Through Cooling Water System A system designed to withdraw water from a natural or other water source, use it at the facility to support contact and/or noncontact cooling uses, and then discharge it to a water body without recirculation. Once-through cooling systems sometimes employ canals/channels, ponds, or non-

recirculating cooling towers to dissipate waste heat from the water before it is discharged.

Operational Measure A modification to any operation at a facility that serves to minimize impact to fish and shellfish from the cooling water intake structure. Examples of operational measures include, but are not limited to, reductions in cooling water intake flow through the use of variable speed pumps and seasonal flow reductions or shutdowns, and more frequent rotation of traveling screens.

Phase II Existing Facility Any existing facility that meets the criteria specified in LAC 33:IX.4733.

Source Water The waters of the U.S. from which the cooling water is withdrawn.

Supplier An entity, other than the regulated facility, that owns and operates its own cooling water intake structure and directly withdraws water from waters of the state. The supplier sells the cooling water to other facilities for their use, but may also use a portion of the water itself. An entity that provides potable water to residential populations (e.g., public water system) is not a supplier for purposes of this Subchapter.

Thermocline The middle layer of a thermally stratified lake or a reservoir. In this layer, there is a rapid change in temperatures between the top and bottom of the layer.

Tidal River The most seaward reach of a river or stream where the salinity is typically less than or equal to 0.5 parts per thousand (by mass) at a time of annual low flow and whose surface elevation responds to the effects of coastal lunar tides.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, LR 31:428 (February 2005).

§4737. How Will Requirements Reflecting Best Technology Available for Minimizing Adverse Environmental Impact Be Established for My Phase II Existing Facility?

A. Compliance Alternatives. You must select and implement one of the following five alternatives for establishing best technology available for minimizing adverse environmental impact at your facility.

1. You may demonstrate to the state administrative authority that you have:

a. reduced, or will reduce, your flow commensurate with a closed-cycle recirculating system. In this case, you are deemed to have met the applicable performance standards and will not be required to demonstrate further that your facility meets the impingement mortality and entrainment performance standards specified in Subsection B of this Section. In addition, you are not subject to the requirements in LAC 33:IX.4739, 4741, 4743, or 4745. However, you may still be subject to any more stringent requirements established under Subsection E of this Section; or

b. reduced, or will reduce, your maximum through-screen design intake velocity to 0.5 ft/s or less. In this case, you are deemed to have met the impingement mortality performance standards and will not be required to demonstrate further that your facility meets the performance standards for impingement mortality specified in Subsection B of this Section, and you are not subject to the requirements in LAC 33:IX.4739, 4741, 4743, or 4745 as they apply to

impingement mortality. However, you are still subject to any applicable requirements for entrainment reduction and may still be subject to any more stringent requirements established under Subsection E of this Section.

2. You may demonstrate to the state administrative authority that your existing design and construction technologies, operational measures, and/or restoration measures meet the performance standards specified in Subsection B of this Section and/or the restoration requirements in Subsection C of this Section.

3. You may demonstrate to the state administrative authority that you have selected, and will install and properly operate and maintain, design and construction technologies, operational measures, and/or restoration measures that will, in combination with any existing design and construction technologies, operational measures, and/or restoration measures, meet the performance standards specified in Subsection B of this Section and/or the restoration requirements in Subsection C of this Section.

4. You may demonstrate to the state administrative authority that you have installed, or will install, and properly operate and maintain an approved design and construction technology in accordance with LAC 33:IX.4747.A or B.

5. You may demonstrate to the state administrative authority that you have selected, installed, and are properly operating and maintaining, or will install and properly operate and maintain, design and construction technologies, operational measures, and/or restoration measures that the state administrative authority has determined to be the best technology available to minimize adverse environmental impact for your facility in accordance with Subparagraph A.5.a or b of this Section.

a. If the state administrative authority determines that data specific to your facility demonstrate that the costs of compliance under alternatives in Paragraphs A.2 through 4 of this Section would be significantly greater than the costs considered by the administrator for a facility like yours in establishing the applicable performance standards in Subsection B of this Section, the state administrative authority will make a site-specific determination of the best technology available for minimizing adverse environmental impact. This determination will be based on reliable, scientifically- valid cost and performance data submitted by you and any other information that the state administrative authority deems appropriate. The state administrative authority will establish site-specific alternative requirements based on new and/or existing design and construction technologies, operational measures, and/or restoration measures that achieve an efficacy that is, in the judgment of the state administrative authority, as close as practicable to the applicable performance standards in Subsection B of this Section, without resulting in costs that are significantly greater than the costs considered by the administrator for a facility like yours in establishing the applicable performance standards. The state administrative authority's site-specific determination may conclude that design and construction technologies, operational measures, and/or restoration measures in addition to those already in place are not justified because of the significantly greater costs. To calculate the costs considered by the state administrative authority for a facility like yours in establishing the applicable performance standards you must:

i. determine which technology the administrator modeled as the most appropriate compliance technology for your facility;

ii. using the administrator's costing equations, calculate the annualized capital and net operation and maintenance (O&M) costs for a facility with your design intake flow using this technology;

iii. determine the annualized net revenue loss associated with net construction downtime that the administrator modeled for your facility to install this technology;

iv. determine the annualized pilot study costs that the administrator modeled for your facility to test and optimize this technology;

v. sum the cost items in Clauses A.5.b.ii, iii, and iv of this Section; and

vi. determine if the performance standards that form the basis of these estimates (i.e., impingement mortality reduction only or impingement mortality and entrainment reduction) are applicable to your facility, and if necessary, adjust the estimates to correspond to the applicable performance standards.

b. If the state administrative authority determines that data specific to your facility demonstrate that the costs of compliance under alternatives in Paragraphs A.2 through 4 of this Section would be significantly greater than the benefits of complying with the applicable performance standards at your facility, the state administrative authority will make a site-specific determination of best technology available for minimizing adverse environmental impact. This determination will be based on reliable, scientifically valid cost and performance data submitted by you and any other information the state administrative authority deems appropriate. The state administrative authority will establish site-specific alternative requirements based on new and/or existing design and construction technologies, operational measures, and/or restoration measures that achieve an efficacy that, in the judgment of the state administrative authority, is as close as practicable to the applicable performance standards in Subsection B of this Section without resulting in costs that are significantly greater than the benefits at your facility. The state administrative authority's site-specific determination may conclude that design and construction technologies, operational measures, and/or restoration measures in addition to those already in place are not justified because the costs would be significantly greater than the benefits at your facility.

B. National Performance Standards

1. Impingement Mortality Performance Standards. If you choose a compliance alternative in Paragraph A.2, 3, or 4 of this Section, you must reduce impingement mortality for all life stages of fish and shellfish by 80 to 95 percent from the calculation baseline.

2. Entrainment Performance Standards. If you choose a compliance alternative in Subparagraph A.1.b or Paragraph A.2, 3, or 4 of this Section, you must also reduce entrainment of all life stages of fish and shellfish by 60 to 90 percent from the calculation baseline if:

a. your facility has a capacity utilization rate of 15 percent or greater; and

b. your facility uses cooling water withdrawn from:
i. a tidal river, estuary, or ocean; or

ii. a freshwater river or stream, and the design intake flow of your cooling water intake structures is greater than 5 percent of the mean annual flow.

3. Additional Performance Standards for Facilities Withdrawing from a Lake or a Reservoir. If your facility withdraws cooling water from a lake or a reservoir and you propose to increase the design intake flow of cooling water intake structures it uses, your increased design intake flow shall not disrupt the natural thermal stratification or turnover pattern, where present, of the source water, except in cases where the disruption does not adversely affect the management of fisheries. In determining whether any such disruption does not adversely affect the management of fisheries, you should consult with federal, state, or tribal fish and wildlife management agencies.

4. Use of Performance Standards for Site-Specific Determinations of Best Technology Available. The performance standards in Paragraphs B.1-3 of this Section must also be used for determining eligibility for site-specific determinations of best technology available for minimizing adverse environmental impact and establishing site-specific requirements that achieve an efficacy as close as practicable to the applicable performance standards without resulting in costs that are significantly greater than those considered by the state administrative authority for a facility like yours in establishing the performance standards or costs that are significantly greater than the benefits at your facility in accordance with Paragraph A.5 of this Section.

C. Requirements for Restoration Measures. With the approval of the state administrative authority, you may implement and adaptively manage restoration measures that produce and result in increases of fish and shellfish in your facility's watershed in place of, or as a supplement to, installing design and control technologies and/or adopting operational measures that reduce impingement mortality and entrainment. You must demonstrate to the state administrative authority that:

1. you have evaluated the use of design and construction technologies and operational measures for your facility and determined that the use of restoration measures is appropriate because meeting the applicable performance standards or site-specific requirements through the use of design and construction technologies and/or operational measures alone is less feasible, less cost-effective, or less environmentally desirable than meeting the standards or requirements in whole or in part through the use of restoration measures; and

2. the restoration measures you will implement, alone or in combination with design and construction technologies and/or operational measures, will produce ecological benefits (fish and shellfish), including maintenance or protection of community structure and function in your facility's water body or watershed, at a level that is substantially similar to the level you would achieve by meeting the applicable performance standards under Subsection B of this Section, or that satisfies alternative site-specific requirements established in accordance with Paragraph A.5 of this Section.

D. Compliance Using a Technology Installation and Operation Plan or Restoration Plan

1. If you choose one of the compliance alternatives in Paragraph A.2, 3, 4, or 5 of this Section, you may request

that compliance with the requirements of Subsection B of this Section during the first permit containing requirements consistent with this Subchapter be determined based on whether you have complied with the construction, operational, maintenance, monitoring, and adaptive management requirements of a technology installation and operation plan developed in accordance with LAC 33:IX.4739.B.4.b, for any design and construction technologies and/or operational measures, and/or a restoration plan developed in accordance with LAC 33:IX.4739.B.5, for any restoration measures. The technology installation and operation plan must be designed to meet applicable performance standards in Subsection B of this Section or alternative site-specific requirements developed in accordance with Paragraph A.5 of this Section. The restoration plan must be designed to achieve compliance with the applicable requirements in Paragraph C of this Section.

2. During subsequent permit terms, if you selected and installed design and construction technologies and/or operational measures and have been in compliance with the construction, operational, maintenance, monitoring, and adaptive management requirements of your technology installation and operation plan during the preceding permit term, you may request that compliance with the requirements of this Section during the following permit term be determined based on whether you remain in compliance with your technology installation and operation plan, revised in accordance with your adaptive management plan in LAC 33:IX.4739.B.4.b.iii if applicable performance standards are not being met. Each request and approval of a technology installation and operation plan will be limited to one permit term.

3. During subsequent permit terms, if you selected and installed restoration measures and have been in compliance with the construction, operational, maintenance, monitoring, and adaptive management requirements in your restoration plan during the preceding permit term, you may request that compliance with the requirements of this Section during the following permit term be determined based on whether you remain in compliance with your restoration plan, revised in accordance with your adaptive management plan in LAC 33:IX.4739.B.5.e if applicable performance standards are not being met. Each request and approval of a restoration plan will be limited to one permit term.

E. More Stringent Standards. The state administrative authority may establish more stringent requirements as best technology available for minimizing adverse environmental impact if the state administrative authority determines that your compliance with the applicable requirements of this Section would not meet the requirements of applicable state and tribal law, or other federal law.

F. Nuclear Facilities. If you demonstrate to the state administrative authority based on consultation with the Nuclear Regulatory Commission that compliance with this Subpart would result in a conflict with a safety requirement established by the commission, the state administrative authority will make a site-specific determination of best technology available for minimizing adverse environmental impact that would not result in a conflict with the Nuclear Regulatory Commission's safety requirement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, LR 31:429 (February 2005).

§4739. As an Owner or Operator of a Phase II Existing Facility, What Must I Collect and Submit When I Apply for My Reissued LPDES Permit?

A. Submittal of Information for an Owner or Operator of a Phase II Existing Facility

1. You must submit to the state administrative authority the proposal for information collection required in Paragraph B.1 of this Section prior to the start of information collection activities.

2. You must submit to the state administrative authority the information required in LAC 33:IX.2501.R.2, 3, and 5 and any applicable portions of the comprehensive demonstration study, except for the proposal for information collection required by Paragraph B.1 of this Section.

a. You must submit your LPDES permit application in accordance with the time frames specified in LAC 33:IX.2501.D.2.

b. If your existing permit expires before July 9, 2008, you may request that the state administrative authority establish a schedule for you to submit the information required by this Section as expeditiously as practicable, but not later than January 7, 2008. Between the time your existing permit expires and the time an LPDES permit containing requirements consistent with this Subchapter is issued to your facility, the best technology available to minimize adverse environmental impact will continue to be determined based on the state administrative authority's best professional judgment.

3. In subsequent permit terms, the state administrative authority may approve a request to reduce the information required to be submitted in your permit application on the cooling water intake structure and the source water body, if conditions at your facility and in the water body remain substantially unchanged since your previous application. You must submit your request for reduced cooling water intake structure and water body application information to the state administrative authority at least one year prior to the expiration of the permit. Your request must identify each required information item in LAC 33:IX.2501.R and this Section that you determine has not substantially changed since the previous permit application and the basis for your determination.

B. Comprehensive Demonstration Study. The purpose of the comprehensive demonstration study ("study") is to characterize impingement mortality and entrainment, to describe the operation of your cooling water intake structures, and to confirm that the technologies, operational measures, and/or restoration measures you have selected and installed, or will install, at your facility meet the applicable requirements of LAC 33:IX.4737. All facilities except those that have met the applicable requirements in accordance with LAC 33:IX.4737.A.1.a-b and A.4 must submit all applicable portions of the study to the state administrative authority in accordance with Paragraph A.1 of this Section. Facilities that meet the requirements in LAC 33:IX.4737.A.1.a by reducing their flow commensurate with a closed-cycle, recirculating system are not required to submit a study. Facilities that meet the requirements in LAC

33:IX.4737.A.1.b by reducing their design intake velocity to 0.5 ft/sec or less are required to submit a study only for the entrainment requirements, if applicable. Facilities that meet the requirements in LAC 33:IX.4737.A.4 and have installed and properly operate and maintain an approved design and construction technology, in accordance with LAC 33:IX.4747, are required to submit only the technology installation and operation plan in Paragraph B.4 of this Section and the verification monitoring plan in Paragraph B.7 of this Section. Facilities that are required to meet only impingement mortality performance standards in LAC 33:IX.4737.B.1 are required to submit only a study for the impingement mortality reduction requirements. The study must include the following information.

1. Proposal For Information Collection. You must submit to the state administrative authority for review and comment a description of the information you will use to support your study. The proposal for information must be submitted prior to the start of information collection activities, but you may initiate such activities prior to receiving comment from the state administrative authority. The proposal must include:

a. a description of the proposed and/or implemented technologies, operational measures, and/or restoration measures to be evaluated in the study;

b. a list and description of any historical studies characterizing impingement mortality and entrainment and/or the physical and biological conditions in the vicinity of the cooling water intake structures and their relevance to this proposed study. If you propose to use existing data, you must demonstrate the extent to which the data are representative of current conditions and that the data were collected using appropriate quality assurance/quality control procedures;

c. a summary of any past or ongoing consultations with appropriate federal, state, and tribal fish and wildlife agencies that are relevant to this study and a copy of written comments received as a result of such consultations; and

d. a sampling plan for any new field studies you propose to conduct in order to ensure that you have sufficient data to develop a scientifically-valid estimate of impingement mortality and entrainment at your site. The sampling plan must document all methods and quality assurance/quality control procedures for sampling and data analysis. The sampling and data analysis methods you propose must be appropriate for a quantitative survey and include consideration of the methods used in other studies performed in the source water body. The sampling plan must include a description of the study area, including the area of influence of the cooling water intake structure, and provide a taxonomic identification of the sampled or evaluated biological assemblages, including all life stages of fish and shellfish.

2. Source Water Body Flow Information. You must submit to the state administrative authority the following source water body flow information.

a. If your cooling water intake structure is located in a freshwater river or stream, you must provide the annual mean flow of the water body and any supporting documentation and engineering calculations to support your analysis of whether your design intake flow is greater than 5 percent of the mean annual flow of the river or stream for

purposes of determining applicable performance standards under Subsection B of this Section. Representative historical data (from a period of time up to 10 years, if available) must be used.

b. If your cooling water intake structure is located in a lake or a reservoir and you propose to increase its design intake flow, you must provide a description of the thermal stratification in the water body, and any supporting documentation and engineering calculations to show that the total design intake flow after the increase will not disrupt the natural thermal stratification and turnover pattern in a way that adversely impacts fisheries, including the results of any consultations with federal, state, or tribal fish and wildlife management agencies.

3. Impingement Mortality and/or Entrainment Characterization Study. You must submit to the state administrative authority an impingement mortality and/or entrainment characterization study, whose purpose is to provide information to support the development of a calculation baseline for evaluating impingement mortality and entrainment and to characterize current impingement mortality and entrainment. The impingement mortality and/or entrainment characterization study must include the following, in sufficient detail to support development of the other elements of the comprehensive demonstration study:

a. taxonomic identifications of all life stages of fish, shellfish, and any species protected under federal, state, or tribal law, including threatened or endangered species, that are in the vicinity of the cooling water intake structure and are susceptible to impingement and entrainment;

b. a characterization of all life stages of fish, shellfish, and any species protected under federal, state, or tribal law, including threatened or endangered species, identified in accordance with Subparagraph B.3.a of this Section, including a description of the abundance and temporal and spatial characteristics in the vicinity of the cooling water intake structure, based on sufficient data to characterize annual, seasonal, and diel variations in impingement mortality and entrainment (e.g., related to climate and weather differences, spawning, feeding, and water column migration). These may include historical data that are representative of the current operation of your facility and of biological conditions at the site; and

c. documentation of the current impingement mortality and entrainment of all life stages of fish, shellfish, and any species protected under federal, state, or tribal law, including threatened or endangered species, identified in accordance with Subparagraph B.3.a of this Section and an estimate of impingement mortality and entrainment to be used as the calculation baseline. The documentation may include historical data that are representative of the current operation of your facility and of biological conditions at the site. Impingement mortality and entrainment samples to support the calculations required in Clause B.4.a.iii and Subparagraph B.5.c of this Section must be collected during periods of representative operational flows for the cooling water intake structure, and the flows associated with the samples must be documented.

4. Technology and Compliance Assessment Information

a. Design and Construction Technology Plan. If you choose to use design and construction technologies and/or

operational measures, in whole or in part, to meet the requirements of LAC 33:IX.4737.A.2 or 3, you must submit a design and construction technology plan to the state administrative authority for review and approval. In the plan, you must provide the capacity utilization rate for your facility, or for individual intake structures where applicable, in accordance with LAC 33:IX.4735, and provide supporting data, including the average annual net generation of the facility (in MWh) measured over a five-year period, if available, of representative operating conditions and the total net capacity of the facility (in MW), and underlying calculations. The plan must explain the technologies and/or operational measures you have in place and/or have selected to meet the requirements in LAC 33:IX.4737. Examples of potentially appropriate technologies may include, but are not limited to, wedgewire screens, fine mesh screens, fish handling and return systems, barrier nets, aquatic filter barrier systems, vertical and/or lateral relocation of the cooling water intake structure, and enlargement of the cooling water intake structure opening to reduce velocity. Examples of potentially appropriate operational measures may include, but are not limited to, seasonal shutdowns, reductions in flow, and continuous or more frequent rotation of traveling screens. The plan must contain the following information:

i. a narrative description of the design and operation of all design and construction technologies and/or operational measures, existing and proposed, including fish handling and return systems, that you have in place or will use to meet the requirements to reduce impingement mortality of those species expected to be most susceptible to impingement, and information that demonstrates the efficacy of the technologies and/or operational measures for those species;

ii. a narrative description of the design and operation of all design and construction technologies and/or operational measures, existing and proposed, that you have in place or will use to meet the requirements to reduce entrainment of those species expected to be the most susceptible to entrainment, if applicable, and information that demonstrates the efficacy of the technologies and/or operational measures for those species;

iii. calculations of the reduction in impingement mortality and entrainment of all life stages of fish and shellfish that would be achieved by the technologies and/or operational measures you have selected based on the impingement mortality and/or entrainment characterization study in Paragraph B.3 of this Section. In determining compliance with any requirements to reduce impingement mortality or entrainment, you must assess the total reduction in impingement mortality and entrainment against the calculation baseline determined in accordance with Paragraph B.3 of this Section. Reductions in impingement mortality and entrainment from this calculation baseline as a result of any design and construction technologies and/or operational measures already implemented at your facility should be added to the reductions expected to be achieved by any additional design and/or construction technologies and operational measures that will be implemented, and any increases in fish and shellfish within the water body attributable to your restoration measures. Facilities that recirculate a portion of their flow, but do not reduce flow

sufficiently to satisfy the compliance option in LAC 33:IX.4737.A.1.a, may take into account the reduction in impingement mortality and entrainment associated with the reduction in flow when determining the net reduction associated with existing design and construction technologies and/or operational measures. This estimate must include a site-specific evaluation of the suitability of the technologies and/or operational measures based on the species that are found at the site, and may be determined based on representative studies (i.e., studies that have been conducted at a similar facility's cooling water intake structures located in the same water body type with similar biological characteristics) and/or site-specific technology prototype or pilot studies; and

iv. design and engineering calculations, drawings, and estimates prepared by a qualified professional to support the descriptions required by Clauses B.4.a.i and ii of this Section.

b. Technology Installation and Operation Plan. If you choose the compliance alternative in LAC 33:IX.4737.A.2, 3, 4, or 5 and use design and construction technologies and/or operational measures in whole or in part to comply with the applicable requirements of LAC 33:IX.4737, you must submit the following information with your application for review and approval by the state administrative authority:

i. a schedule for the installation and maintenance of any new design and construction technologies. Any downtime of generating units to accommodate installation and/or maintenance of these technologies should be scheduled to coincide with otherwise necessary downtime (e.g., for repair, overhaul, or routine maintenance of the generating units) to the extent practicable. Where additional downtime is required, you may coordinate scheduling of this downtime with the North American Electric Reliability Council and/or other generators in your area to ensure that impacts to reliability and supply are minimized;

ii. a list of operational and other parameters to be monitored, and the location at which and frequency with which you will monitor them;

iii. a list of activities you will undertake to ensure to the degree practicable the efficacy of installed design and construction technologies and operational measures, and your schedule for implementing them;

iv. a schedule and method for assessing the efficacy of any installed design and construction technologies and operational measures in meeting applicable performance standards or site-specific requirements, including an adaptive management plan for revising design and construction technologies, operational measures, operation and maintenance requirements, and/or monitoring requirements if your assessment indicates that applicable performance standards or site-specific requirements are not being met; and

v. if you choose the compliance alternative in LAC 33:IX.4737A.4, documentation that the appropriate site conditions in LAC 33:IX.4747.A or B exist at your facility.

5. Restoration Plan. If you propose to use restoration measures, in whole or in part, to meet the applicable requirements in LAC 33:IX.4737, you must address species of concern identified in consultation with federal, state, and tribal fish and wildlife management agencies with

responsibility for fisheries and wildlife potentially affected by your cooling water intake structure. The following information must be submitted with your application for review and approval by the state administrative authority.

a. You must provide a demonstration to the state administrative authority that you have evaluated the use of design and construction technologies and/or operational measures for your facility and an explanation of how you determined that restoration would be more feasible, cost-effective, or environmentally desirable.

b. You must provide a narrative description of the design and operation of all restoration measures, existing and proposed, that you have in place or will use to produce fish and shellfish.

c. You must provide a quantification of the ecological benefits of the proposed restoration measures. You must use information from the impingement mortality and/or entrainment characterization study required in Paragraph B.3 of this Section, and any other available and appropriate information, to estimate the reduction in fish and shellfish impingement mortality and/or entrainment that would be necessary for your facility to comply with LAC 33:IX.4737.C.2. You must then calculate the production of fish and shellfish that you will achieve with the restoration measures you will or have already installed. You must include a discussion of the nature and magnitude of uncertainty associated with the performance of these restoration measures. You must also include a discussion of the time frame within which these ecological benefits are expected to accrue.

d. You must design calculations, drawings, and estimates to document that your proposed restoration measures in combination with design and construction technologies and/or operational measures, or alone, will meet the requirements of LAC 33:IX.4737.C.2. If the restoration measures address the same fish and shellfish species identified in the impingement mortality and/or entrainment characterization study (in-kind restoration), you must demonstrate that the restoration measures will produce a level of these fish and shellfish substantially similar to that which would result from meeting applicable performance standards in LAC 33:IX.4737.B, or that they will satisfy site-specific requirements established in accordance with LAC 33:IX.4737.A.5. If the restoration measures address fish and shellfish species different from those identified in the impingement mortality and/or entrainment characterization study (out-of-kind restoration), you must demonstrate that the restoration measures produce ecological benefits substantially similar to or greater than those that would be realized through in-kind restoration. Such a demonstration should be based on a watershed approach to restoration planning and consider applicable multi-agency watershed restoration plans, site-specific peer-reviewed ecological studies, and/or consultation with appropriate federal, state, and tribal fish and wildlife management agencies.

e. You must provide a plan utilizing an adaptive management method for implementing, maintaining, and demonstrating the efficacy of the restoration measures you have selected and for determining the extent to which the restoration measures, or the restoration measures in combination with design and construction technologies and

operational measures, have met the applicable requirements of LAC 33:IX.4737.C.2. The plan must include:

i. a monitoring plan that includes a list of the restoration parameters that will be monitored, the frequency with which you will monitor them, and success criteria for each parameter;

ii. a list of activities you will undertake to ensure the efficacy of the restoration measures, a description of the linkages between these activities and the items in Clause B.5.e.i of this Section, and an implementation schedule; and

iii. a process for revising the restoration plan as new information, including monitoring data, becomes available, if the applicable requirements under LAC 33:IX.4737.C.2 are not being met.

f. You must provide a summary of any past or ongoing consultation with appropriate federal, state, and tribal fish and wildlife management agencies on your use of restoration measures, including a copy of any written comments received as a result of such consultations.

g. If requested by the state administrative authority, you must provide a peer review of the items you submit for the restoration plan. You must choose the peer reviewers in consultation with the state administrative authority, who may consult with EPA and federal, state, and tribal fish and wildlife management agencies with responsibility for fish and wildlife potentially affected by your cooling water intake structure. Peer reviewers must have appropriate qualifications (e.g., in the fields of geology, engineering, and/or biology, etc.) depending upon the materials to be reviewed.

h. You must provide a description of the information to be included in a biannual status report to the state administrative authority.

6. Information to Support Site-Specific Determination of Best Technology Available For Minimizing Adverse Environmental Impact. If you have requested a site-specific determination of best technology available for minimizing adverse environmental impact in accordance with LAC 33:IX.4737.A.5.a because of costs significantly greater than those considered by the administrator for a facility like yours in establishing the applicable performance standards of LAC 33:IX.4737.B, you must provide to the state administrative authority the information specified in Subparagraphs B.6.a and c of this Section. If you have requested a site-specific determination of best technology available for minimizing adverse environmental impact in accordance with LAC 33:IX.4737.A.5.b because of costs significantly greater than the benefits of meeting the applicable performance standards of LAC 33:IX.4737.B at your facility, you must provide the information specified in Subparagraphs B.6.a and c of this Section.

a. Comprehensive Cost Evaluation Study. You must perform and submit the results of a comprehensive cost evaluation study that includes:

i. engineering cost estimates in sufficient detail to document the costs of implementing design and construction technologies, operational measures, and/or restoration measures at your facility that would be needed to meet the applicable performance standards of LAC 33:IX.4737.B;

ii. a demonstration that the costs documented in Clause B.6.a.i of this Section significantly exceed either

those considered by the administrator for a facility like yours in establishing the applicable performance standards or the benefits of meeting the applicable performance standards at your facility; and

iii. engineering cost estimates in sufficient detail to document the costs of implementing the design and construction technologies, operational measures, and/or restoration measures in your site-specific technology plan developed in accordance with Subparagraph B.6.c of this Section.

b. Benefits Valuation Study. If you are seeking a site-specific determination of best technology available for minimizing adverse environmental impact because of costs significantly greater than the benefits of meeting the applicable performance standards of LAC 33:IX.4737.B at your facility, you must use a comprehensive method to fully value the impacts of impingement mortality and entrainment at your site and the benefits achievable by meeting the applicable performance standards. In addition to the valuation estimates, the benefit study must include the following:

i. a description of the method used to value commercial, recreational, and ecological benefits, including any non-use benefits, if applicable;

ii. documentation of the basis for any assumptions and quantitative estimates. If you plan to use an entrainment survival rate other than zero, you must submit a determination of entrainment survival at your facility based on a study approved by the state administrative authority;

iii. an analysis of the effects of significant sources of uncertainty on the results of the study; and

iv. if requested by the state administrative authority, a peer review of the items you submit in the benefits valuation study. You must choose the peer reviewers in consultation with the state administrative authority, who may consult with EPA and federal, state, and tribal fish and wildlife management agencies with responsibility for fish and wildlife potentially affected by your cooling water intake structure. Peer reviewers must have appropriate qualifications depending upon the materials to be reviewed; and

v. a narrative description of any non-monetized benefits that would be realized at your site if you were to meet the applicable performance standards, and a qualitative assessment of their magnitude and significance.

c. Site-Specific Technology Plan. Based on the results of the comprehensive cost evaluation study required by Subparagraph B.6.a of this Section, and the benefits valuation study required by Subparagraph B.6.b of this Section, if applicable, you must submit a site-specific technology plan to the state administrative authority for review and approval. The plan must contain the following information:

i. a narrative description of the design and operation of all existing and proposed design and construction technologies, operational measures, and/or restoration measures that you have selected in accordance with LAC 33:IX.4737.A.5;

ii. an engineering estimate of the efficacy of the proposed and/or implemented design and construction technologies or operational measures, and/or restoration measures. This estimate must include a site-specific

evaluation of the suitability of the technologies or operational measures for reducing impingement mortality and/or entrainment, as applicable, of all life stages of fish and shellfish based on representative studies (e.g., studies that have been conducted at cooling water intake structures located in the same water body type with similar biological characteristics) and, if applicable, site-specific technology prototype or pilot studies. If restoration measures will be used, you must provide a restoration plan that includes the elements described in Paragraph B.5 of this Section;

iii. a demonstration that the proposed and/or implemented design and construction technologies, operational measures, and/or restoration measures achieve an efficacy that is as close as practicable to the applicable performance standards of LAC 33:IX.4737.B without resulting in costs significantly greater than either the costs considered by the administrator for a facility like yours in establishing the applicable performance standards or, as appropriate, the benefits of complying with the applicable performance standards at your facility; and

iv. design and engineering calculations, drawings, and estimates prepared by a qualified professional to support the elements of the plan.

7. Verification Monitoring Plan. If you comply using compliance alternatives in LAC 33:IX.4737.A.2, 3, 4, or 5 using design and construction technologies and/or operational measures, you must submit a plan to conduct, at a minimum, two years of monitoring to verify the full-scale performance of the proposed or already-implemented technologies and/or operational measures. The verification study must begin once the design and construction technologies and/or operational measures are installed and continue for a period of time that is sufficient to demonstrate to the state administrative authority whether the facility is meeting the applicable performance standards in LAC 33:IX.4737.B or site-specific requirements developed in accordance with LAC 33:IX.4737.A.5. The plan must provide the following:

a. a description of the frequency and duration of monitoring, the parameters to be monitored, and the basis for determining the parameters and the frequency and duration for monitoring. The parameters selected and duration and frequency of monitoring must be consistent with any method for assessing success in meeting applicable performance standards in your technology installation and operation plan as required by Subparagraph B.4.b of this Section;

b. a proposal on how naturally moribund fish and shellfish that enter the cooling water intake structure would be identified and taken into account in assessing success in meeting the performance standards in LAC 33:IX.4737.B; and

c. a description of the information to be included in a biannual status report to the state administrative authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, LR 31:432 (February 2005).

§4741. As an Owner or Operator of a Phase II Existing Facility, What Monitoring Must I Perform?

A. As an owner or operator of a Phase II existing facility, you must perform monitoring, as applicable, in accordance with the technology installation and operation plan required

by LAC 33:IX.4739.B.4.b, the restoration plan required by LAC 33:IX.4739.B.5, the verification monitoring plan required by LAC 33:IX.4739.B.7, and any additional monitoring specified by the state administrative authority to demonstrate compliance with the applicable requirements of LAC 33:IX.4737.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, LR 31:436 (February 2005).

§4743. As an Owner or Operator of a Phase II Existing Facility, What Records Must I Keep and What Information Must I Report?

A. As an owner or operator of a Phase II existing facility you must keep records and report information and data to the state administrative authority as follows.

1. You must keep records of all the data used to complete the permit application and show compliance with the requirements of LAC 33:IX.4737, any supplemental information developed under LAC 33:IX.4739, and any compliance monitoring data submitted under LAC 33:IX.4741, for a period of at least three years from date of permit issuance. The state administrative authority may require that these records be kept for a longer period.

2. You must submit a status report to the state administrative authority for review every two years that includes appropriate monitoring data and other information as specified by the state administrative authority in accordance with LAC 33:IX.4745.B.5.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, LR 31:436 (February 2005).

§4745. As the State Administrative Authority, What Must I Do To Comply With the Requirements of this Subchapter?

A. Permit Application. As the state administrative authority, you must review materials submitted by the applicant under LAC 33:IX.2501.R and LAC 33:IX.4739 before each permit renewal or reissuance.

1. You must review and comment on the proposal for information collection submitted by the facility in accordance with LAC 33:IX.4739.A.1. You are encouraged to provide comments expeditiously so that the permit applicant can make responsive modifications to its information gathering activities. If a facility submits a request in accordance with LAC 33:IX.4739.A.2.b for an alternate schedule for submitting the information required in LAC 33:IX.4739, you must approve a schedule that is as expeditious as practicable, but does not extend beyond January 7, 2008. If a facility submits a request in accordance with LAC 33:IX.4739.A.3 to reduce the information about its cooling water intake structures and the source water body required to be submitted in its permit application, other than with the first permit application after September 7, 2004, you must approve the request within 60 days if conditions at the facility and in the water body remain substantially unchanged since the previous application.

2. After receiving the permit application from the owner or operator of a Phase II existing facility, you must determine which of the requirements specified in LAC

33:IX.4737 apply to the facility. In addition, you must review materials to determine compliance with the applicable requirements.

3. At each permit renewal, you must review the application materials and monitoring data to determine whether new or revised requirements for design and construction technologies, operational measures, or restoration measures should be included in the permit to meet the applicable performance standards in LAC 33:IX.4737.B or alternative site-specific requirements established in accordance with LAC 33:IX.4747.A.5.

B. Permitting Requirements. Section 316(b) (of the CWA) requirements are implemented for a facility through an LPDES permit. As the state administrative authority, you must consider the information submitted by the Phase II existing facility in its permit application, and determine the appropriate requirements and conditions to include in the permit based on the compliance alternatives in LAC 33:IX.4737.A. The following requirements must be included in each permit.

1. Cooling Water Intake Structure Requirements. The permit conditions must include the requirements that implement the applicable provisions of LAC 33:IX.4737. You must evaluate the performance of the design and construction technologies, operational measures, and/or restoration measures proposed and implemented by the facility and require additional or different design and construction technologies, operational measures, and/or restoration measures, and/or improved operation and maintenance of existing technologies and measures, if needed to meet the applicable performance standards, restoration requirements, or alternative site-specific requirements. In determining compliance with the performance standards for facilities proposing to increase withdrawals of cooling water from a lake or a reservoir in accordance with LAC 33:IX.4737.B.3, you must consider anthropogenic factors (those not considered "natural") unrelated to the Phase II existing facility's cooling water intake structures that can influence the occurrence and location of a thermocline. These include source water inflows, other water withdrawals, managed water uses, wastewater discharges, and flow/level management practices (e.g., some reservoirs release water from deeper bottom layers). As the state administrative authority, you must coordinate with appropriate federal, state, or tribal fish and wildlife management agencies to determine if any disruption of the natural thermal stratification resulting from the proposed increased withdrawal of cooling water adversely affects the management of fisheries.

a. You must review and approve the design and construction technology plan required in LAC 33:IX.4739.B.4 to evaluate the suitability and feasibility of the design and construction technologies and/or operational measures proposed to meet the performance standards in LAC 33:IX.4737.B or site-specific requirements developed in accordance with LAC 33:IX.4737.A.5.

b. If the facility proposes restoration measures in accordance with LAC 33:IX.4737.C, you must review and approve the restoration plan required under LAC 33:IX.4739.B.5 to determine whether the proposed measures, alone or in combination with design and

construction technologies and/or operational measures, will meet the requirements under LAC 33:IX.4737.C.

c. In each reissued permit, you must include a condition in the permit requiring the facility to reduce impingement mortality and entrainment, or to increase fish production, if applicable, commensurate with the efficacy at the facility of the installed design and construction technologies, operational measures, and/or restoration measures.

d. If the facility implements design and construction technologies and/or operational measures and requests that compliance with the requirements in LAC 33:IX.4737 be measured for the first permit term, or subsequent permit terms, if applicable, employing the technology installation and operation plan in accordance with LAC 33:IX.4739.B.4.b, you must review the technology installation and operation plan to ensure that it meets the requirements of LAC 33:IX.4739.B.4.b. If the technology installation and operation plan meets the requirements of LAC 33:IX.4739.B.4.b, you must approve the technology installation and operation plan and require the facility to meet the terms of the plan including any revision to the plan that may be necessary if applicable performance standards or alternative site-specific requirements are not being met. If the facility implements restoration measures and requests that compliance with the requirements in LAC 33:IX.4737 be measured for the first permit term, or subsequent permit terms, if applicable, employing a restoration plan in accordance with LAC 33:IX.4739.B.5, you must review the restoration plan to ensure it meets the requirements of LAC 33:IX.4739.B.5. If the restoration plan meets the requirements of LAC 33:IX.4739.B.5, you must approve the plan and require the facility to meet the terms of the plan including any revision to the plan that may be necessary if applicable performance standards or site-specific requirements are not being met. In determining whether to approve a technology installation and operation plan or restoration plan, you must evaluate whether the design and construction technologies, operational measures, and/or restoration measures the facility has installed, or proposes to install, can reasonably be expected to meet the applicable performance standards in LAC 33:IX.4737.B, restoration requirements in LAC 33:IX.4737.C.2, and/or alternative site-specific requirements established in accordance with LAC 33:IX.4737.A.5, and whether the technology installation and operation plan and/or the restoration plan complies with the applicable requirements of LAC 33:IX.4739.B. In reviewing the technology installation and operation plan, you must approve any reasonable scheduling provisions that are designed to ensure that impacts to energy reliability and supply are minimized, in accordance with LAC 33:IX.4739.B.4.b.i. If the facility does not request that compliance with the requirements in LAC 33:IX.4737 be measured employing a technology installation and operation plan and/or a restoration plan, or the facility has not been in compliance with the terms of its current technology installation and operation plan and/or restoration plan during the preceding permit term, you must require the facility to comply with the applicable performance standards in LAC 33:IX.4737.B, restoration requirement in LAC 33:IX.4737.C.2, and/or alternative site-specific requirements developed in accordance with LAC 33:IX.4737.A.5. In

considering a permit application, you must review the performance of the design and construction technologies, operational measures, and/or restoration measures implemented and require additional or different design and construction technologies, operational measures, and/or restoration measures, and/or improved operation and maintenance of existing technologies and measures, if needed to meet the applicable performance standards, restoration requirements, and/or alternative site-specific requirements.

e. You must review and approve the proposed verification monitoring plan submitted under LAC 33:IX.4739.B.7 for design and construction technologies, and/or monitoring provisions of the restoration plan submitted under LAC 33:IX.4739.B.5.e, and require that the monitoring continue for a sufficient period of time to demonstrate whether the design and construction technologies, operational measures, and/or restoration measures meet the applicable performance standards in LAC 33:IX.4737.B, restoration requirements in LAC 33:IX.4737.C.2, and/or site-specific requirements established in accordance with LAC 33:IX.4737.A.5.

f. If a facility requests requirements based on a site-specific determination of best technology available for minimizing adverse environmental impact, you must review the application materials submitted under LAC 33:IX.4739.B.6 and any other information you may have, including quantitative and qualitative benefits, that would be relevant to a determination of whether alternative requirements are appropriate for the facility. If a facility submits a study to support entrainment survival at the facility, you must review and approve the results of that study. If you determine that alternative requirements are appropriate, you must make a site-specific determination of best technology available for minimizing adverse environmental impact in accordance with LAC 33:IX.4737.A.5. You, as the state administrative authority, may request revisions to the information submitted by the facility in accordance with LAC 33:IX.4739.B.6 if it does not provide an adequate basis for you to make this determination. Any alternative site-specific requirements established based on new and/or existing design and construction technologies, operational measures, and/or restoration measures, must achieve an efficacy that is, in your judgment, as close as practicable to the applicable performance standards of LAC 33:IX.4737.B without resulting in costs that are significantly greater than the costs considered by the state administrative authority for a like facility in establishing the applicable performance standards in LAC 33:IX.4737, determined in accordance with LAC 33:IX.4737.A.5.a.i-vi, or the benefits of complying with the applicable performance standards at the facility.

g. You must review the proposed methods for assessing success in meeting applicable performance standards and/or restoration requirements submitted by the facility under LAC 33:IX.4739.B.4.b.iv and/or B.5.e.i, evaluate those and other available methods, and specify how assessment of success in meeting the performance standards and/or restoration requirements will be determined, including the averaging period for determining the percent reduction in impingement mortality and entrainment and/or the production of fish and shellfish. Compliance for facilities

that request that compliance be measured employing a technology installation and operation plan and/or restoration plan will be determined in accordance with Subparagraph B.1.d of this Section.

2. Monitoring Conditions. You must require the facility to perform monitoring in accordance with the technology installation and operation plan in LAC 33:IX.4739.B.4.b, the restoration plan required by LAC 33:IX.4739.B.5, if applicable, and the verification monitoring plan required by LAC 33:IX.4739.B.7. In determining any additional applicable monitoring requirements in accordance with LAC 33:IX.4741, you must consider the monitoring facility's verification monitoring, technology installation and operation, and/or restoration plans, as appropriate. You may modify the monitoring program based on changes in physical or biological conditions in the vicinity of the cooling water intake structure.

3. Recordkeeping and Reporting. At a minimum, the permit must require the facility to report and keep records specified in LAC 33:IX.4743.

4. Design and Construction Technology Approval

a. For a facility that chooses to demonstrate that it has installed and can properly operate and maintain a design and construction technology approved in accordance with LAC 33:IX.4747, the state administrative authority must review and approve the information submitted in the technology installation and operation plan in LAC 33:IX.4739.B.4.b and determine if it meets the criteria in LAC 33:IX.4747.

b. If a person requests approval of a technology under LAC 33:IX.4747.B, the state administrative authority must review and approve the information submitted and determine its suitability for widespread use at facilities with similar site conditions in its jurisdiction with minimal study. As the state administrative authority, you must evaluate the adequacy of the technology when installed in accordance with the required design criteria and site conditions to consistently meet the performance standards in LAC 33:IX.4737. You, as the state administrative authority, may only approve a technology following public notice and consideration of comment regarding such approval.

5. Biannual Status Report. You must specify monitoring data and other information to be included in a status report every two years. The other information may include operation and maintenance records, summaries of adaptive management activities, or any other information that is relevant to determining compliance with the terms of the facility's technology operation and installation plan and/or restoration plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, LR 31:436 (February 2005).

§4747. What Are Approved Design and Construction Technologies?

A. The following technologies constitute approved design and construction technologies for purposes of LAC 33:IX.4737.A.4:

1. submerged cylindrical wedge-wire screen technology, if you meet the following conditions:

- a. your cooling water intake structure is located in a freshwater river or stream;
- b. your cooling water intake structure is situated such that sufficient ambient counter currents exist to promote cleaning of the screen face;
- c. your maximum through-screen design intake velocity is 0.5 ft/s or less;
- d. the slot size is appropriate for the size of eggs, larvae, and juveniles of all fish and shellfish to be protected at the site; and
- e. your entire main condenser cooling water flow is directed through the technology. Small flows totaling less than 2 MGD for auxiliary plant cooling uses are excluded from this provision;

2. a technology that has been approved in accordance with the process described in Paragraph B of this Section.

B. You or any other interested person may submit a request to the state administrative authority that a technology be approved in accordance with the compliance alternative in LAC 33:IX.4737.A.4 after providing the public with notice and an opportunity to comment on the request for approval of the technology. If the state administrative authority approves the technology, it may be used by all facilities with similar site conditions under the state administrative authority's jurisdiction. Requests for approval of a technology must be submitted to the state administrative authority and include the following information:

- 1. a detailed description of the technology;
- 2. a list of design criteria for the technology and site characteristics and conditions that each facility must have in order to ensure that the technology can consistently meet the appropriate impingement mortality and entrainment performance standards in LAC 33:IX.4737.B; and
- 3. information and data sufficient to demonstrate that facilities under the jurisdiction of the state administrative authority can meet the applicable impingement mortality and entrainment performance standards in LAC 33:IX.4737.B if the applicable design criteria and site characteristics and conditions are present at the facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, LR 31:438 (February 2005).

Chapter 59. Secondary Treatment under the LPDES Program

§5911. Treatment Equivalent to Secondary Treatment

This Section describes the minimum level of effluent quality attainable by facilities eligible for treatment equivalent to secondary treatment (LAC 33:IX.5903. *Facilities Eligible for Treatment Equivalent to Secondary Treatment*) in terms of the parameters BOD₅, TSS, and pH. All requirements for the specified parameters in LAC 33:IX.5911.A, B, and C shall be achieved except as provided for in LAC 33:IX.5907, or 5911.D, E, or F.

A. - C. ...

D. Alternative State Requirements. Except as limited by LAC 33:IX.5911.F, and after notice and opportunity for

public comment, the state administrative authority, subject to EPA approval, is authorized to adjust the minimum levels of effluent quality set forth in LAC 33:IX.5911.A.1-2, and B.1-2 for trickling filter facilities and in LAC 33:IX.5911.A.1-2 for waste stabilization pond facilities, to conform to the BOD₅ and TSS effluent concentrations consistently achievable through proper operation and maintenance (LAC 33:IX.5903) by the median (50th percentile) facility in a representative sample of facilities within the state or appropriate contiguous geographical area that meet the definition of facilities eligible for treatment equivalent to secondary treatment (LAC 33:IX.5903).

E. - F.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Water Pollution Control Division, LR 23:726 (June 1997), repromulgated by the Office of Environmental Assessment, Environmental Planning Division, LR 30:232 (February 2004), amended by the Office of Environmental Assessment, LR 31:439 (February 2005).

Chapter 71. Appendices
§7103. Appendix B Criteria for Determining a Concentrated Animal Feeding Operation Reserved

Repealed and Reserved.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), repromulgated by the Office of Environmental Assessment, Environmental Planning Division, LR 30:233 (February 2004), repealed by the Office of Environmental Assessment, LR 31:439 (February 2005).

Wilbert F. Jordan, Jr.
 Assistant Secretary

0412#056

RULE

Office of the Governor
Division of Administration
Office of Group Benefits

EPO Plan of Benefits Hearing Aids for Minor Dependents (LAC 32:V.301 and 317)

In accordance with the applicable provisions of R.S. 49:950, et seq., the Administrative Procedure Act, and pursuant to the authority granted by R.S. 42:801(C) and 802(B)(2) vesting the Office of Group Benefits (OGB) with the responsibility for administration of the programs of benefits authorized and provided pursuant to Chapter 12 of Title 42 of the Louisiana Revised Statutes, and granting the power to adopt and promulgate rules with respect thereto, OGB finds that it is necessary to revise and amend provisions of the EPO Plan Document relative to authorize limited benefits for hearing aids for covered dependent

children under the age of 18. This action is necessary to comply with the provisions of R. S. 22:215.25 enacted by Acts 2003, No. 816.

Accordingly, OGB hereby amends the following Rule to become effective upon promulgation.

Title 32

EMPLOYEE BENEFITS

Part V. Exclusive Provider Organization

(EPO) Plan of Benefits

Chapter 3. Medical Benefits

§301. Medical Benefits Apply When Eligible Expenses Are Incurred by a Covered Person

A. - A.32. ...

33. hearing aids for use by a covered dependent child under the age of 18, subject to the following limitations:

a. the hearing aids must fitted and dispensed by a licensed audiologist or licensed hearing aid specialist following medical clearance by a licensed doctor of medicine (M.D.) and an audiological evaluation medically appropriate to the age of the child;

b. the maximum amount payable is \$1,400 per hearing aid for each hearing-impaired ear every 36 months; and

c. this benefit shall apply whether or not the hearing impairment is a pre-existing condition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1810 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 28:478 (March 2002), LR 29:334, 338 (March 2003), LR 30:1190 (June 2004), LR 31:440 (February 2005).

§317. Exceptions and Exclusions for All Medical Benefits

A. - A.26. ...

27. Hearing aids or any examination to determine the fitting or necessity, except as specifically provided in §301.A.33.

28. - 41. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1813 (October 1999), amended LR 26:487 (March 2000), LR 27:717 (May 2001), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 28:2340 (November 2002), LR 31:440 (February 2005).

A. Kip Wall
Chief Executive Officer

0502#051

RULE

**Office of the Governor
Division of Administration
Office of Group Benefits**

MCO Plan of Benefits Hearing Aids for Minor Dependents
(LAC 32:IX.301 and 317)

In accordance with the applicable provisions of R.S. 49:950, et seq., the Administrative Procedure Act, and pursuant to the authority granted by R.S. 42:801(C) and 802(B)(2) vesting the Office of Group Benefits (OGB) with the responsibility for administration of the programs of benefits authorized and provided pursuant to Chapter 12 of Title 42 of the Louisiana Revised Statutes, and granting the power to adopt and promulgate rules with respect thereto, OGB finds that it is necessary to revise and amend provisions of the MCO Plan Document to authorize limited benefits for hearing aids for covered dependent children under the age of 18. This action is necessary to comply with the provisions of R. S. 22:215.25 enacted by Acts 2003, No. 816.

Accordingly, OGB hereby amends the following Rule to become effective upon promulgation.

Title 32

EMPLOYEE BENEFITS

Part IX. Managed Care Option (MCO) Plan of Benefits

Chapter 3. Medical Benefits

§301. Medical Benefits Apply When Eligible Expenses Are Incurred by a Covered Person

A. - A.32. ...

33. hearing aids for use by a covered dependent child under the age of 18, subject to the following limitations:

a. the hearing aids must fitted and dispensed by a licensed audiologist or licensed hearing aid specialist following medical clearance by a licensed doctor of medicine (M.D.) and an audiological evaluation medically appropriate to the age of the child;

b. the maximum amount payable is \$1,400 per hearing aid for each hearing-impaired ear every 36 months; and

c. this benefit shall apply whether or not the hearing impairment is a pre-existing condition.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits LR 29:888 (June 2003), amended LR 30:1191 (June 2004), LR 31:440 (February 2005).

§317. Exceptions and Exclusions for All Medical Benefits

A. - A.26. ...

27. hearing aids or any examination to determine the fitting or necessity, except as specifically provided in §301.A.33;

28. - 41. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:892 (June 2003), amended LR 31:441 (February 2005).

A. Kip Wall
Chief Executive Officer

0502#052

RULE

**Office of the Governor
Division of Administration
Office of Group Benefits**

PPO Plan of Benefits Hearing Aids for Minor Dependents
(LAC 32:III.301 and 317)

In accordance with the applicable provisions of R.S. 49:950, et seq., the Administrative Procedure Act, and pursuant to the authority granted by R.S. 42:801(C) and 802(B)(2) vesting the Office of Group Benefits (OGB) with the responsibility for administration of the programs of benefits authorized and provided pursuant to Chapter 12 of Title 42 of the Louisiana Revised Statutes, and granting the power to adopt and promulgate rules with respect thereto, OGB finds that it is necessary to revise and amend provisions of the PPO Plan Document to authorize limited benefits for hearing aids for covered dependent children under the age of 18. This action is necessary to comply with the provisions of R. S. 22:215.25 enacted by Acts 2003, No. 816.

Accordingly, OGB hereby amends the following Rule to become effective upon promulgation.

Title 32

EMPLOYEE BENEFITS

Part III. Preferred Provider Organization (PPO) Plan of Benefits

Chapter 3. Medical Benefits

§301. Medical Benefits Apply When Eligible Expenses Are Incurred by a Covered Person

A. - A.32. ...

33. Hearing aids for use by a covered dependent child under the age of 18, subject to the following limitations:

a. the hearing aids must fitted and dispensed by a licensed audiologist or licensed hearing aid specialist following medical clearance by a licensed doctor of medicine (M.D.) and an audiological evaluation medically appropriate to the age of the child;

b. the maximum amount payable is \$1,400 per hearing aid for each hearing-impaired ear every 36 months; and

c. this benefit shall apply whether or not the hearing impairment is a pre-existing condition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1830 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 28:480 (March 2002), LR 29:339, 343 (March 2003), LR 30:1192 (June 2004), LR 31:441 (February 2005).

§317. Exceptions and Exclusions for All Medical Benefits

A. - A.26. ...

27. hearing aids or any examination to determine the fitting or necessity, except as specifically provided in §301.A.33;

28. - 41. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1834 (October 1999), amended LR 26:488 (March 2000), LR 27:720 (May 2001), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 28:2343 (November 2002), LR 31:441 (February 2005).

A. Kip Wall
Chief Executive Officer

0502#053

RULE

**Department of Health and Hospitals
Board of Physical Therapy Examiners**

Physical Therapy Services without Prescription/Referral
(LAC 46:LIV.306)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., that the Louisiana State Board of Physical Therapy Examiners (board), pursuant to the authority vested in the board by the Physical Therapy Practice Act, R.S. 37:2401-2422 amends Title 46, Subpart 2, Chapter 3, Subchapter A of its administrative rules to address Physical Services Without Prescriptions or Referrals. These Rules are intended to facilitate and implement the provisions of R.S. 37:2410 D-D.(5)(a).

The Rule is set forth below.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

**Part LIV. Physical Therapy Examiners
Subpart 2. Practice**

**Chapter 3. Practice
Subchapter A. General Provisions**

§306. Physical Therapy Services without Prescription or Referral

A. These rules are intended to facilitate and implement the provisions of R.S. 37:2410.D-D.(5)(a). They are meant as practical guidelines, while maintaining flexibility in the rendering of physical therapy services, without eliminating the opportunity for oversight and supervision.

B. As used in R.S. 37:2410.D.(1), (2) (3) and (5)(a), the following words and phrases shall have the following meaning.

Children Can individual or individuals under the age of 21 years.

Patient Can individual receiving treatment through physical therapy services for a diagnosed condition or conditions.

Plan of Care A Written Treatment Plan or Program as defined in §305, and incorporating the documentation standards provided for in §323.A.2.

C. As used in connection with providing the services referred to in R.S. 37:2410.D.(4):

1. the word *client* shall mean an individual seeking or receiving information, education and/or recommended activities concerning wellness and preventative services, including conditioning, injury prevention, reduction of stress or promotion of fitness;

2. prior to providing services, the physical therapist shall:

a. perform an initial screening to determine whether treatment or wellness/preventative services are indicated. The therapist shall inform the individual of the screening results and make recommendations for follow-up with the appropriate health care provider if needed;

b. assess the client's wellness/preventative services needs, and, should wellness/preventative services be indicated and desired, develop a written plan, which describes the wellness/preventative services to be rendered to the client.

D. Regarding physical therapy rendered pursuant to R.S. 37:2410.D.(5)(a):

1. **Health Care Provider Rendering a Diagnosis** Care those Health Care Providers statutorily authorized to make a diagnosis;

2. physical therapy treatment for a diagnosed condition or conditions may be rendered after the physical therapist has documented verification that the condition has been diagnosed by a health care provider as set forth in §306.D.1 within the past 90 days;

3. the physical therapist shall provide to this healthcare provider, the plan of care for physical therapy services within 15 days of this intervention as set forth in R.S. 37:2410.D.(5)(a).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401-2422.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 31:441 (February 2005).

Pat Adams, PT
Chairman

0502#027

RULE

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

Children's Respite Care Centers Licensing
(LAC 48:I.Chapter 80)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing hereby adopts LAC 48:I.Chapter 80 as authorized by R.S.

40:2175.11-2175.15. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 48

PUBLIC HEALTH GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 80. Children's Respite Care Centers

Subchapter A. General Provisions

§8001. Definitions

Activities of Daily Living (ADL's) The following functions or tasks performed either independently or with supervision or assistance:

1. mobility;
2. transferring;
3. walking;
4. grooming;
5. bathing;
6. dressing and undressing;
7. eating;
8. toileting.

Advance Directives Can instruction given to the patient's family (see definition of family) such as a durable power of attorney for health care, a directive pursuant to patient self-determination initiatives, a living will, or an oral directive which either states a person's choices for medical treatment, or in the event the person is unable to make treatment choices, designates who shall make those decisions.

Attending/Primary Physician A person who is a doctor of medicine or osteopathy fully licensed to practice medicine in the state of Louisiana, who is designated by the patient as the physician responsible for his/her medical care.

Bereavement Services Organized services provided under the supervision of a qualified professional to help the family cope with death related grief and loss issues. This is to be provided for at least one year following the death of the patient.

Branch A location or site from which a children's respite care center (CRCC) agency provides services within a portion of the total geographic area served by the parent agency. The branch office is part of the parent CRCC agency and is located within a 50-mile radius of the parent agency and shares administration and supervision.

Bureau The Bureau of Health Services Financing of the Department of Health and Hospitals.

Care Giver The person whom the patient designates to provide his/her emotional support and/or physical care.

Children's Respite Care Center (CRCC) Can autonomous, centrally administered, pediatric medical respite program providing a continuum of home, outpatient, and homelike inpatient care for children living with life-limiting illnesses and their families. The CRCC employs an interdisciplinary team to assist in providing palliative and supportive care combined with curative treatment to meet the special needs arising out of physical, emotional, spiritual, social, and economic stresses experienced during life-limiting illnesses as well as during dying and bereavement if a cure is not attained.

Contracted Services Services provided to a CRCC provider or its patients by a third party under a legally binding agreement that defines the roles and responsibilities of the CRCC and service provider.

Core Services—medical respite program services, nursing services, physician services, social work services, counseling services, including bereavement counseling, pastoral counseling, and any other counseling services provided to meet the needs of the individual and family, and support services including trained volunteers. These services must be provided by employees of the CRCC, through contracted services and/or volunteers.

CRCC Premises—the physical site where the CRCC maintains staff to perform administrative functions, maintains personnel records, maintains client service records, provides a homelike environment for inpatient respite care, and holds itself out to the public as being a location for receipt of client referrals.

CRCC Services—a coordinated program of a continuum of care to children with life-threatening conditions, their families and caregivers, which allows access to palliative care while continuing with aggressive and curative treatment from the time of admission through bereavement, in the child's home, at the CRCC, and/or in medical facilities.

Department—the Department of Health and Hospitals (DHH).

Discharge—the point at which the patient's active involvement with the CRCC program is ended and the program no longer has active responsibility for the care of the patient.

Do Not Resuscitate Orders—orders written by the patient's physician which stipulate that in the event the patient has a cardiac or respiratory arrest, no cardiopulmonary resuscitation will be initiated or carried out.

Emotional Support—counseling provided to assist the individual and/or family in coping with stress, grief, and loss.

Employee—an individual whom the CRCC pays directly for services performed on an hourly or per visit basis and the CRCC is required to issue a form W-2 on his/her behalf. If a contracting service or another agency pays the individual, and is required to issue a form W-2 on the individual's behalf, or the individual is self-employed, the individual is not considered a CRCC employee. An individual is also considered a CRCC employee if the individual is a volunteer under the jurisdiction of the CRCC.

Family—a group of two or more individuals related by ties of blood, legal status, or affection who consider themselves a family.

Geographic Area—the area around the location of a licensed agency which is within a 50-mile radius of the agency premises. Each CRCC must designate the geographic area in which the agency will provide services.

Governing Body—the person or group of persons that assumes full legal responsibility for determining, implementing and monitoring policies governing the CRCC's total operation. The governing body must designate an individual who is responsible for the day-to-day management of the CRCC program, and must also insure that all services provided are consistent with accepted standards of practice. Written minutes and attendance of governing body meetings are to be maintained.

Home—a person's place of residence.

Informed Consent—a documented process in which information regarding the potential and actual benefits and

risks of a given procedure or program of care is exchanged between provider and patient/family.

Inpatient Services—care available for treatment, pain control, symptom management and/or respite purposes that are provided in a participating facility.

Interdisciplinary Team (IDT)—an interdisciplinary group designated by the CRCC, composed of representatives from all the core services. The IDT must include at least a doctor of medicine or osteopathy, a registered nurse, a social worker, and a pastoral or other counselor. The interdisciplinary team is responsible for:

1. participation in the establishment of the plan of care;
2. provision or supervision of CRCC care and services;
3. periodic review and updating of the plan of care for each individual receiving CRCC care; and
4. establishment of policies governing the day-to-day provision of CRCC care and services.

License (CRCC)—a document permitting an organization to provide children's respite care for a specific period of time under the rules and policies set forth by the state of Louisiana.

Life-Limiting Illness—a medical prognosis of limited expected survival because of ailment, illness, disease, or misfortune including, but not limited to:

1. injury;
2. accident;
3. cancer;
4. heart disease; and
5. congenital and chronic obstructive pulmonary disease.

Medical Director—a person who is a doctor of medicine or osteopathy, currently and legally authorized to practice medicine in the state of Louisiana who will:

1. serve as a consultant to the interdisciplinary team;
2. write orders in the event of an emergency in which the child's primary physician cannot be reached; and
3. attend monthly IDT meetings.

Medical Respite Care—the temporary care and supervision of a child living with a life-limiting illness so that the primary caregiver can be relieved of such duties. Such services may be performed in the home of the child or in a facility owned or leased by the children's respite care center.

Medical Social Services—includes:

1. a comprehensive psychosocial assessment;
2. ongoing support for the patient and family; and
3. assistance with coping skills, anticipatory grief, and grief reactions.

Non-Core Services—services provided directly by the CRCC employees, under arrangement, or through referral which include, but are not limited to:

1. home health aide;
2. physical therapy services;
3. occupational therapy services;
4. speech-language pathology services;
5. in-patient care for pain control and symptom management and respite purposes; and
6. medical supplies and appliances, including drugs and biologicals.

Palliative Care—the reduction or abatement of pain or other troubling symptoms by appropriate coordination of the

interdisciplinary team required to achieve needed relief of distress.

Pastoral Services Providing the availability of clergy as needed to address the patient's/family's spiritual needs and concerns.

Pediatric Birth through age 20.

Plan of Care (POC) A written document established and maintained for each individual admitted to a CRCC program. Care provided to an individual must be in accordance with the plan. The plan includes an assessment of the individual's needs and identification of the services including the management of discomfort and symptom relief.

Representative A person authorized under state law to act on behalf of an individual.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:443 (February 2005).

§8003. Licensing

A. An application packet shall be obtained from the Department of Health and Hospitals (department or DHH). A completed application packet for a CRCC facility shall be submitted to and approved by DHH prior to an applicant providing CRCC services.

B. It shall be unlawful to operate or maintain a CRCC without first obtaining a license from the department. The Department of Health and Hospitals is the only licensing agency for CRCC in the state of Louisiana.

C. A separately licensed CRCC shall not use a name which is substantially the same as the name of another CRCC licensed by the department unless the applicant is part of a corporation or is chain affiliated.

D. The licensing agency shall have authority to issue two licenses as described below.

1. Full license is issued only to those applicants that are in substantial compliance with all applicable federal, state, and local laws, regulations, and policies. The license shall be valid until the expiration date shown on the license.

2. Provisional license is issued to those existing licensed applicants which do not meet the criteria for full licensure. The license shall be valid for six months or until the termination date stated on such license.

a. An agency with a provisional license may be issued a full license if at the follow-up survey the applicant has corrected the violations. A full license will be issued for the remainder of the year until the CRCC's license anniversary date.

b. DHH may re-issue a provisional license or initiate licensing revocation of a provisional license when the CRCC fails to correct violations within 60 days of being cited, or at the time of the follow-up survey, whichever occurs first.

c. A provisional license may be issued by DHH for the following nonexclusive reasons:

i. the applicant has more than five violations of CRCC regulations during one survey;

ii. the applicant has more than three valid complaints in a one-year period;

iii. there is a documented incident that places a patient at risk;

iv. the applicant fails to correct violations within 60 days of being cited, or at the time of a follow-up survey, whichever occurs first;

v. the applicant has an inadequate referral base, other than at the time of the initial survey for licensure, has less than 10 new patients admitted since the last annual survey;

vi. the applicant fails to submit assessed fees after notification by DHH; or

vii. there is documented evidence that the applicant has bribed, or harassed any person to use the services of any particular CRCC agency.

E. The current license shall be displayed in a conspicuous place inside the CRCC program office at all times. A license shall be valid only in the possession of the CRCC to which it is issued and for only that particular physical address. A license shall not be subject to sale, assignment, or other transfer, voluntary or involuntary. A license shall not be valid for any CRCC other than the CRCC for which originally issued.

F. All requirements of the application process shall be completed by the applicant before the application will be processed by DHH. No application will be reviewed until payment of the application fee.

1. The applicant, with the exception of the demonstration model, must become fully operational and prepared for an initial survey within 90 days after payment of the application fee. If the agency is unable to do so, the application shall be considered closed and the agency shall be required to submit a new application packet, including fees.

2. An initial applicant shall, as a condition of licensure, submit:

a. a complete and accurate CRCC application packet. (This packet shall be purchased from DHH which contains the forms required for initial CRCC licensure. The fee for this packet shall be set by DHH.) The physical address provided on the application must be the physical address from which the applicant will be operating;

b. current licensing fee (as established by statute) by certified check, company check, or money order;

c. documentation of qualifications for the administrator and director of nursing. Any changes in the individuals designated or in their qualifications must be submitted to and approved by DHH prior to the initial survey;

d. disclosure of any financial and/or familial relationship with any other entity receiving third party payor funds, or any entity which has previously been licensed in Louisiana;

e. approval for occupancy from the Office of the State Fire Marshal;

f. approval of plan review from the DHH's Division of Engineering and Architectural Services; and

g. a recommendation for licensure from the Office of Public Health.

G. All CRCCs required to be licensed by the law shall comply with the rules, established fire protection standards, and enforcement policies as promulgated by the Office of State Fire Marshal. It shall be the primary responsibility of the Office of State Fire Marshal to determine if applicants are complying with those requirements. No license shall be

issued or renewed without the applicant furnishing a certificate from the Office of State Fire Marshal stating that the applicant is complying with their provisions. A provisional license may be issued to the applicant if the Office of State Fire Marshal issues the applicant a conditional certificate.

H. All CRCCs required to be licensed by the law shall comply with the applicable rules and regulations contained in the Louisiana State Sanitary Code [Title 51 of the *Louisiana Administrative Code* (LAC 51)] as promulgated by the Office of Public Health. It shall be the primary responsibility of the Office of Public Health to determine if applicants are complying with those requirements. If a nursing facility published rule conflicts with this Chapter 80, the stricter of the two rules shall govern. No initial license shall be issued without the applicant furnishing a copy of the LHS-48 (Institution Report) form from the Office of Public Health stating that the applicant is complying with their provisions and is recommended for licensure. A provisional license may be issued to the applicant if the Office of Public Health issues the applicant a conditional certificate.

I. Construction documents (plans and specifications) are required to be submitted and approved by the Louisiana State Fire Marshal, the DHH's Division of Engineering and Architectural Services, and the Office of Public Health as a part of the licensing procedure and prior to obtaining a license.

1. Submission of Plans

a. The following documents shall be submitted for review and approval prior to construction:

i. one set of the final construction documents shall be submitted to the Louisiana State Fire Marshal for approval. The Fire Marshal's letter of approval and final inspection shall be sent to DHH's Division of Engineering and Architectural Services;

ii. one set of the final construction documents (plans and specifications) shall be submitted to the Louisiana Department of Health and Hospitals, Division of Engineering and Architectural Services, along with the appropriate review fee, and a plan review application form for approval; and

iii. one set of the final construction documents (plans and specifications) shall be submitted to the Office of Public Health for any ancillary facilities associated with the project including, but not limited to, plans and specifications for any food service facilities, swimming/treatment pools, water supply system (such as a facility's own water well/surface water treatment plant), or sewerage disposal system (such as the facility's own sewage treatment plant). Such plans and specifications shall be accompanied by a completed cover sheet which identifies the type of facility for which a license is to be applied for along with any of the proposed project's ancillary facilities. This Section shall not be interpreted to preclude the possibility of the necessity for the applicant to submit additional plans and specifications which may be required by the Office of Public Health.

b. Applicable Projects. Construction documents (plans and specifications) are required to be approved for the following type projects:

- i. new construction;
- ii. new CRCCs; or
- iii. major alterations/substantial renovations.

c. The project shall be designed in accordance with the following criteria:

i. current Edition of *Guidelines for Design and Construction of Hospital and Health Care Facilities*, published by the American Institute of Architects, 1735 New York Ave., NW, Washington, D. C. 20006-5292 (Internet URL address: <http://www.aia.org/>);

ii. current edition of *NFPA 101 Life Safety Code*, published by the National Fire Protection Association, 1 Batterymarch, Quincy, MA 02169-7471 (Internet URL address: <http://www.nfpa.org/>);

iii. Part XIV (Plumbing) of the Louisiana State Sanitary Code (LAC 51:XIV);

iv. current edition of the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG);

v. the current Louisiana Department of Health and Hospitals licensing standards for children's respite care centers (LAC 48:I.Chapter 80); and

vi. applicable provisions of the Louisiana State Sanitary Code (LAC 51).

d. Preparation of Construction Documents. Construction documents (plans and specifications) for submission to the Louisiana Department of Health and Hospitals shall be prepared only by a Louisiana licensed architect or qualified licensed engineer as governed by the licensing laws of the state of Louisiana for the type of work to be performed. Construction documents submitted shall be of an architectural or engineering nature, and thoroughly illustrate the project through accurately drawn, dimensioned, and noted plans, details, schedules, and specifications. At a minimum, the following shall be submitted:

i. site plan(s);

ii. floor plan(s). These shall include architectural, mechanical, plumbing, electrical, fire protection, and if required by code, sprinkler, and fire alarm plans;

iii. building elevations;

iv. room finish, door, and window schedules;

v. details pertaining to Americans with Disabilities Act (ADA) requirements;

vi. specifications for materials; and

vii. an additional set of basic preliminary type, legible site plan and floor plans in either 8-1/2" x 11"; 8-1/2" x 14"; or 11" x 17" format. (These are for use by DHH in doing the final inspection of the facility and should include legible room names).

2. Approval of Plans

a. Notice of satisfactory review from DHH's Division of Engineering and Architectural Services, the Office of State Fire Marshal, and the Office of Public Health constitutes compliance with this requirement if construction begins within 180 days of the date of such notice. This approval shall in no way permit and/or authorize any omission or deviation from the requirements of any restrictions, laws, ordinances, codes or rules of any responsible agency.

b. In the event that submitted materials do not appear to satisfactorily comply with all design criteria, the Department of Health and Hospitals, Division of Engineering and Architectural Services and/or the Office of Public Health shall furnish a letter to the party submitting the application for review, which lists the particular items in

question and request further explanation and/or confirmation of necessary modifications.

3. Waivers

a. The secretary of the department may, within his sole discretion, grant waivers to building and construction guidelines which are not otherwise required under the provisions of the Louisiana State Sanitary Code. The facility must submit a waiver request in writing to the Division of Engineering and Architectural Services. The facility shall demonstrate how patient safety and the quality of care offered are not compromised by the waiver. The facility must demonstrate their ability to completely fulfill all other requirements of the waiver. The department will make a written determination of the request. Waivers are not transferable in an ownership change and are subject to review or revocation upon any change in circumstances related to the waiver.

b. The secretary, in exercising his discretion, must at a minimum, require the applicant to comply with the edition of the building and construction guidelines which immediately preceded the 2001 edition of the *Guidelines for Design and Construction of Hospital and Health Care Facilities*.

c. The state health officer of the department may, within his sole discretion, grant waivers to building and construction guidelines which are required under the provisions of the Louisiana State Sanitary Code. The facility must submit a waiver request in writing to the state health officer. The facility shall demonstrate how public health and the quality of care offered are not compromised by the waiver. The facility must demonstrate their ability to completely fulfill all other requirements of the waiver. The state health officer will make a written determination of the request. Waivers are not transferable in an ownership change and are subject to review or revocation upon any change in circumstances related to the waiver.

J. An applicant may be denied a license for the following reasons:

1. failure to comply with applicable federal, state, and local laws;

2. failure to complete the application process;

3. conviction of a felony by the following, as shown by a certified copy of the record of the court of the conviction:

a. owner;

b. administrator;

c. director of nursing;

d. members or officers, or the person(s) designated to manage or supervise the CRCC if the applicant is a firm or corporation.

K. Physical Environment

1. Equipment and furnishings in a CRCC facility shall provide for the health care needs of the resident while providing a home-like atmosphere.

2. The CRCC facility shall design and equip areas for the comfort and privacy of patients and family members. The facility shall have:

a. physical space for private patient/family visiting;

b. accommodations for family members to remain with the patient throughout the night;

c. accommodations for family privacy after a patient's death; and

d. decor which is homelike in design and function.

3. Patient rooms shall be designed and equipped for adequate nursing care and the comfort and privacy of patients. Each patient's room shall:

a. be equipped with toilet and bathing facilities;

b. be equipped with a lavatory in each patient's room;

c. be at or above grade level;

d. contain room décor that is homelike and noninstitutional in design and function. Room furnishings for each patient shall include a bed with side rails, a bedside stand, an over-the-bed table, and individual reading light easily accessible to each patient, and a comfortable chair. The patient shall be permitted to bring personal items of furniture or furnishing into their rooms, unless medically inappropriate;

e. have closet space that provides security and privacy for clothing and personal belongings;

f. contain no more than two patient beds;

g. measure at least 100 square feet for a single patient room or 80 square feet for each patient for a multi patient room;

h. be equipped with a device for calling the staff member on duty. A call bell or other communication mechanism shall be placed within easy reach of the patient and shall be functioning properly. A call bell shall be provided in each patient's toilet, bath, and shower room; and

i. all patient rooms shall be outside rooms with a window of clear glass of not less than 12 square feet.

4. Water Temperature. The CRCC facility shall:

a. provide an adequate supply of hot water at all times for patient use;

b. have plumbing fixtures with a scald preventative valve of the pressure balancing, thermostatic, or combination mixing valve type that automatically regulates the temperature of the hot water used by patients to a maximum of 120°F; and

c. designate a staff member responsible for monitoring and logging water temperatures at least monthly. This person is responsible for reporting any problems to the administrator.

5. Linen Supply

a. The CRCC facility shall have available at all times a quantity of linen essential for proper care and comfort of patients. Linens shall be handled, stored, processed, and transported in such a manner as to prevent the spread of infection. The facility shall have a clean linen storage area.

b. The linen supply shall at all times be adequate to accommodate the number of beds and the number of incontinent patients.

c. Soiled linen and clothing shall be collected and enclosed in suitable bags or containers (covered carts or receptacles) and stored in a well ventilated area. Soiled linen shall not be permitted to accumulate in the facility.

d. The CRCC facility shall have policies and procedures that address:

i. frequency of linen changes;

ii. storage of clean linen; and

iii. storage of soiled linen.

6. The CRCC facility shall make provisions for isolating patients with infectious diseases. The CRCC should

institute the most current recommendations of the Centers for Disease Control and Prevention (CDC) relative to the specific infection(s) and communicable disease(s). The CRCC facility shall isolate infected patients only to the degree needed to isolate the infecting organism. The method shall be the least restrictive possible while maintaining the integrity of the process and the dignity of the patient. The CRCC facility provisions for isolating patients with infectious diseases shall include:

a. definition of nosocomial infections and communicable diseases;

b. measures for assessing and identifying patients and health care workers at risk for infections and communicable diseases;

c. measures for prevention of infections, especially those associated with immunosuppressed patients and other factors which compromise a patient's resistance to infection;

d. measures for prevention of communicable disease outbreaks;

e. provision of a safe environment consistent with the current CDC recommendations for identified infection and/or communicable disease;

f. isolation procedures and requirements for infected or immunosuppressed patients;

g. use and techniques for universal precautions;

h. methods for monitoring and evaluating practice of asepsis;

i. care of contaminated laundry, i.e., covered containers or receptacles, clearly marked bags and separate handling procedures;

j. care of dishes and utensils, i.e., clearly marked and handled separately;

k. use of any necessary gowns, gloves, or masks posted and observed by staff, visitors, and anyone else in contact with the patient;

l. techniques for hand washing, respiratory protection, asepsis sterilization, disinfection, needle disposal, solid waste disposal, as well as any other means for limiting the spread of contagion;

m. orientation of all CRCC personnel to the infection control program, and to communicable diseases; and

n. employee health policies regarding infectious diseases. When infected or ill, employees shall not render direct patient care.

7. The CRCC facility shall provide:

a. storage for administrative supplies;

b. hand washing facilities provided with hot and cold water, hand soap, and paper towels located convenient to each nurse's station and drug distribution station;

c. charting facilities for staff at each nurse's station;

d. a clean workroom which contains a work counter, sink with hot and cold water, storage facilities and covered waste receptacles;

e. a soiled workroom which contains a sink with hot and cold water and other facilities necessary for the receiving and cleanup of soiled equipment;

f. parking for stretchers and wheelchairs in an area out of the path of normal traffic and of adequate size for the facility;

g. a janitor's closet equipped with a floor drain and hot and cold water as well as mop hooks over the sink and storage space for housekeeping equipment and supplies;

h. a suitable multi-purpose lounge or lounges furnished for reception, recreation, dining, visitation, group social activities and worship. Such lounge or lounges shall be located convenient to the patient rooms designed to be served;

i. a conference and consultation room suitable and furnished for family privacy, clergy visitation, counseling, and viewing of a deceased patient's body during bereavement. The conference and consultation room shall be located convenient to the patient rooms it is designed to serve;

j. public telephone; and

k. public restrooms.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:444 (February 2005).

§8005. Survey

A. A survey shall be an on-site visit conducted to assure compliance with CRCC licensing standards. Home visits may be conducted as part of the survey to ascertain compliance.

B. Types of Survey

1. Initial Survey. After approval of the application by DHH, the CRCC must become fully operational, in substantial compliance with applicable federal, state, and local laws, and providing care to two and only two patients at the time of the initial survey. No inpatients shall be admitted until the initial on-site survey has been performed. The initial on-site survey shall be scheduled after the agency notifies the department that the agency is fully operational and providing services. If, at the initial licensing survey, an agency has violations of licensing standards which are determined to be of such a serious nature that they may cause or have the potential to cause actual harm, DHH may deny licensing.

2. Licensing Survey. A licensing survey is an unannounced on-site visit periodically conducted to assure compliance with CRCC licensing standards.

3. Follow-up Survey. An on-site follow-up may be conducted whenever necessary to assure correction of violations. When applicable, DHH may clear violations at exit interview and/or by mail.

4. Complaint Survey. A complaint survey shall be conducted to investigate allegations of noncompliance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:447 (February 2005).

§8007. License Renewal Process

A. A CRCC license must be renewed annually.

B. An agency seeking a renewal of its CRCC license shall:

1. request a renewal packet from the bureau if one is not received at least 45 days prior to license expiration;

2. complete all forms and return to the bureau at least 30 days prior to license expiration; and

3. submit the current annual licensing fees with the packet. An application is not considered to have been submitted unless the licensing fees are received.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:447 (February 2005).

§8009. Fees

A. Any remittance submitted to DHH in payment of a required fee must be in the form of a company or certified check or money order made payable to the Department of Health and Hospitals.

B. Fee amounts shall be determined by DHH.

C. Fees paid to DHH are not refundable.

D. A fee is required to be submitted with the following:

1. an initial application;
2. a renewal application;
3. a change of controlling ownership; and
4. a change of name or physical address.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:448 (February 2005).

§8011. Changes

A. The Department of Health and Hospitals shall be notified, in writing, of any of the following within five working days of the occurrence:

1. change in physical address. (An agency must notify and receive approval from DHH prior to a change of physical address);
2. change of agency name;
3. change of phone number;
4. change of hours of operation/24 hour contact procedure;
5. change of ownership (controlling);
6. change in address or phone number of any branch office;
7. change of administrator (completed Key Personnel Change Form, obtained from DHH, is required); and
8. change of director of nursing (completed Key Personnel Change Form required); or
9. cessation of business.

B. Change of Ownership

1. Change of Ownership (CHOW) packets may be obtained from DHH. Only an agency with a full license shall be approved to undergo a change of ownership. A CRCC license is not transferable from one entity or owner to another.

2. The following must be submitted within five working days after the act of sale:

- a. a new license application and the current licensing fee. The purchaser of the agency must meet all criteria required for initial licensure for CRCC;
- b. any changes in the name and/or address of the CRCC;
- c. any changes in administrative personnel (DON, administrator, medical director);
- d. disclosure of ownership forms;

e. a copy of the Bill of Sale and Articles of Incorporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:448 (February 2005).

§8013. Revocation or Denial of Renewal of License

A. The secretary of DHH may deny an application for a license, or refuse to renew a license or revoke a license in accordance with the Administrative Procedure Act. An agency's license may not be renewed and/or may be revoked for any of the following:

1. failure to be in substantial compliance with the CRCC minimum standards;
2. failure to uphold patient rights whereby violations may result in harm or injury;
3. failure of the agency to protect patients/persons in the community from harmful actions of the agency employees; including, but not limited to:
 - a. health and safety;
 - b. coercion;
 - c. threat;
 - d. intimidation; and
 - e. harassment;
4. failure to notify proper authorities of all suspected cases of neglect, criminal activity, or mental or physical abuse which could potentially cause harm to the patient;
5. failure to maintain staff adequate to provide necessary services to current active patients;
6. failure to employ qualified personnel;
7. failure to remain fully operational at any time for any reason other than a disaster;
8. failure to submit fees including, but not limited to:
 - a. annual fee;
 - b. renewal fee;
 - c. provisional follow-up fee; or
 - d. change of agency address or name; or
 - e. any fines assessed by DHH;
9. failure to allow entry to CRCC or access to any requested records during any survey;
10. failure to protect patients from unsafe, skilled and/or unskilled care by any person employed by CRCC;
11. failure of CRCC to correct violations after being issued a provisional license;
12. agency staff or owner has knowingly, or with reason to know, made a false statement of a material fact in:
 - a. application for licensure;
 - b. data forms;
 - c. clinical records;
 - d. matters under investigations by the department;
 - e. information submitted for reimbursement from any payment source;
 - f. the use of false, fraudulent or misleading advertising;
 - g. agency staff misrepresented or was fraudulent in conducting CRCC business; or
 - h. convictions of a felony by an owner, administrator, director of nursing or medical director as shown by a certified copy of the record of the court of conviction; or if the applicant is a firm or corporation, of any of its members or officers, or of the person designated to manage or supervise the CRCC agency; or

13. failure to comply with all reporting requirements in a timely manner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:448 (February 2005).

§8015. Notice and Appeal

A. Notice shall be given in accordance with the current state statutes.

B. Administrative Reconsideration. The CRCC agency may request an administrative reconsideration of the violation(s) which support the department's actions. This is an informal process and reconsideration shall be conducted by a designated official(s) of the department who did not participate in the initial decision to impose the actions taken. Reconsideration shall be made solely on the basis of documents and/or oral presentations placed before the official and shall include the survey report and statement of violations and all documentation the CRCC submits to the department at the time of the agency's request for reconsideration. Correction of a violation shall not be a basis for reconsideration and a hearing shall not be held. Oral presentations can be made by the department's spokesperson(s) and the CRCC's spokesperson(s). This process is not in lieu of the administrative appeals process and does not extend the time limits for filing an administrative appeal. The designated official shall have the authority only to affirm the decision, to revoke the decision, to affirm part and revoke part, or to request additional information from either the department or the CRCC.

C. Administrative Appeal Process. Upon refusal of DHH to grant a license as provided in the current state statutes, or upon revocation or suspension of a license, or the imposition of a fine, the agency, institution, corporation, person, or other group affected by such action shall have the right to appeal such action by submitting a written request to the secretary of the department within 30 days after receipt of the notification of the refusal, revocation, suspension of a license, or imposition of a fine.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:449 (February 2005).

Subchapter B. Core Services

§8021. Core Services

A. Core services may be provided by employees of the CRCC or on a contractual basis. The CRCC is responsible for all actions of the contract personnel.

B. The CRCC must provide the following core services:

1. medical respite program services;
2. nursing services;
3. physician services;
4. social work services;
5. counseling services; and
6. support services, including trained volunteers and bereavement and pastoral care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:449 (February 2005).

Subchapter C. Personnel

§8027. Administrator

A. The administrator is a person who is designated, in writing, by the governing body as administratively responsible for all aspects of CRCC operations. When the administrator serves more than one licensed agency, he/she shall designate, in writing, an alternate to serve as administrator for each site where he/she is not physically housed continuously. The alternate shall be a full-time, on-site employee of the CRCC and shall meet the same qualifications as the administrator. The administrator and the director of nurses/alternates may be the same individual if that individual is dually qualified. An administrator serving as director of nurses, while employed by the CRCC, may not be employed by any other licensed health care agency.

1. An administrator must be a licensed physician, a licensed registered nurse, a social worker with a master's degree, or a college graduate with a bachelor's degree. An administrator shall have at least three years of documented management experience in a health care service delivery.

2. The administrator shall be responsible for compliance with all regulations, laws, policies and procedures applicable to the CRCC facility specifically and to Medicare/Medicaid issues when applicable. The administrator shall:

a. implement personnel and employment policies to assure that only qualified personnel are hired. Licensure and/or certification (as required by law) shall be verified prior to employment and annually thereafter and records shall be maintained to support competency of all allied health personnel;

b. implement policies and procedures that establish and support quality patient care, cost control, and mechanisms for disciplinary action for infractions;

c. ensure the CRCC employs qualified individuals;

d. be on-site during business hours or immediately available by telecommunications when off-site conducting the business of the CRCC, and available after hours as needed;

e. be responsible for and direct the day-to-day operations of the CRCC facility;

f. act as liaison among staff, patients and the governing board;

g. ensure that all services are correctly billed to the proper payer source;

h. designate, in writing, an individual who meets the administrator qualifications to assume the authority and the control of the CRCC if the administrator is unavailable; and

i. designate in advance the IDT he/she chooses to establish policies governing the day-to-day provisions of the CRCC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:449 (February 2005).

§8029. Counselor-Bereavement

A. The bereavement counselor shall have documented evidence of appropriate training and experience in the care of the bereaved, received under the supervision of a qualified professional. The counselor shall implement bereavement counseling in a manner consistent with

standards of practice and CRCC policy. Services include, but are not limited to:

1. assessment of grief counseling needs;
2. providing bereavement information and referral services to the bereaved, as needed, in accordance with the POC;
3. providing bereavement support to the CRCC staff as needed;
4. attending CRCC end of life IDT meetings; and
5. documenting bereavement services provided and progress of bereaved on clinical progress notes to be incorporated in the clinical record within one week of the visit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:449 (February 2005).

§8031. Counselor-Pastoral

A. The pastoral counselor shall have documented evidence of appropriate training and skills to provide spiritual counseling, such as Bachelor of Divinity, Master of Divinity or equivalent theological degree or training. The counselor shall provide pastoral counseling based on the initial and ongoing assessment of spiritual needs of the patient/family, in a manner consistent with standards of practice including, but not limited to:

1. serving as a liaison and support to community chaplains and/or pastoral counselors;
2. providing consultation, support, and education to the IDT members on spiritual care;
3. attending IDT meetings; and
4. documenting pastoral services provided on clinical progress notes to be incorporated in the clinical record within one week of the visit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:450 (February 2005).

§8033. Dietician

A. The dietician shall be a registered dietician or a person who meets the qualification standards of the Commission on Dietetic Registration of the American Dietetic Association. The dietician shall implement dietary services consistent with standards of practice including, but not limited to:

1. clinical progress notes, including the nutritional status of the patient, are to be incorporated into the clinical records within one week of the visit;
2. collaborate with the patient/family, physician, registered nurse and/or the IDT in providing dietary counseling to the patient/family;
3. instruct patient/family and/or CRCC staff as needed;
4. evaluate patient socioeconomic factors to develop recommendations concerning food purchasing, preparation and storage;
5. evaluate food preparation methods to ensure nutritive value is conserved, flavor, texture and temperature principles are adhered to in meeting the individual patient's needs; and
6. participate in IDT conference as needed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:450 (February 2005).

§8035. Dietary Manager

A. A dietary manager shall meet one of the following:

1. be a graduate of a dietetic technician or dietetic assistant training program, approved by the American Dietetic Association, by correspondence or classroom;
2. be a graduate of a state-approved course that provides 90 or more hours of classroom instruction in food service supervision and has experience as a supervisor in a health care institution with consultation from a dietitian; or
3. have training and experience in food service supervision and management in the military service, equivalent in content to a dietetic technician or dietetic assistant training program, approved by the American Dietetic Association, by correspondence or classroom.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:450 (February 2005).

§8037. Director of Nurses

A. The director of nurses (DON) shall be designated, in writing, by the governing body to supervise all aspects of patient care, all activities of professional staff and allied health personnel, and responsible for compliance with regulatory requirements. The DON, or alternate, shall be on site or immediately available to be on site at all times during operating hours, and additionally as needed. If the DON is unavailable he/she shall designate a registered nurse to be responsible during his/her absence.

B. The director of nurses shall be a registered nurse and must be currently licensed to practice in the state of Louisiana:

1. with at least three years experience as a registered nurse. One of these years shall consist of full-time experience in providing direct patient care in a hospice, home health, pediatric, oncology, or CRCC setting; and
2. be a full-time employee of only one CRCC facility. The director of nurses is prohibited from simultaneous/concurrent employment.

C. The director of nursing shall supervise all patient care activities to assure compliance with current standards of accepted nursing and medical practice including, but not limited to the following:

1. the POC;
2. supervise employee health program, implement policies and procedures that establish and support quality patient care;
3. assure compliance with local, state, and federal laws, and promote health and safety of employees, patients and the community, using the following nonexclusive methods:
 - a. resolve problems;
 - b. perform complaint investigations;
 - c. refer impaired personnel to proper authorities;
 - d. provide orientation and in-service training to employees to promote effective CRCC services and safety of the patient, to familiarize staff with regulatory issues, and agency policy and procedures;

- e. orient new direct health care personnel;
- f. perform timely annual performance evaluations of health care personnel;
- g. assure participation in regularly scheduled appropriate continuing education for all health professionals and home health aides;
- h. assure that the care provided by the health care personnel promotes effective respite/end of life services and the safety of the patient; and
- i. assure that the CRCC policies are enforced.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:450 (February 2005).

§8039. Governing Body

A. The CRCC shall have a governing body that assumes full legal responsibility for determining, implementing and monitoring policies governing the CRCC's total operation. No contracts/arrangements or other agreements may limit or diminish the responsibility of the governing body. The governing body shall:

- 1. designate an administrator who is responsible for the day to day management of the CRCC program;
- 2. ensure that all services provided are consistent with accepted standards of practice;
- 3. develop and approve policies and procedures which define and describe the scope of services offered;
- 4. review policies and procedures at least annually and revise them as necessary; and
- 5. maintain an organizational chart that delineates lines of authority and responsibility for all CRCC personnel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:451 (February 2005).

§8041. Home Health Aide

A. The home health aide shall be a qualified person who provides direct patient care and/or housekeeping duties in the home or homelike setting under the direct supervision of a registered nurse. The home health aide competency evaluation is to be completed by a registered nurse prior to the home health aide being assigned to provide patient care.

B. The home health aide shall:

- 1. have a current nursing assistant certification and have successfully completed a competency evaluation; or
- 2. have successfully completed a training program and have successfully completed a competency evaluation; or
- 3. have successfully completed a competency evaluation; and
- 4. exhibit maturity, an empathetic, sympathetic attitude, and ability to deal effectively with the demands of the job;
- 5. have the ability to read, write, and carry out directions, promptly and accurately; and
- 6. when employed by more than one agency, inform all employers and coordinate duties to assure highest quality when providing services to the patients.

C. The home health aide shall provide services established and delegated in POC, record and notify the primary registered nurse of deviations according to standard practice including, but not limited to:

1. performing simple one-step wound care if written documentation of in-service for that specific procedure is in the aide's personnel record. All procedures performed by the aide must be in compliance with current standards of nursing practice;

2. providing assistance with mobility, transferring, walking, grooming, bathing, dressing or undressing, eating, toileting, and/or housekeeping needs. Some examples of assistance include:

- a. helping the patient with a bath, care of the mouth, skin and hair;
- b. helping the patient to the bathroom or in using a bed pan or urinal;
- c. helping the patient to dress and/or undress;
- d. helping the patient in and out of bed, assisting with ambulating;
- e. helping the patient with prescribed exercises which the patient and home health aide have been taught by appropriate personnel; and
- f. performing such incidental household services essential to the patient's health care at home that are necessary to prevent or postpone institutionalization.

D. The home health aide shall document each visit made to the patient and incorporate notes into the clinical record within one week of the visit.

E. The home health aide shall not:

- 1. perform any intravenous procedures, procedures involving the use of Levine tubes or Foley catheters, suctioning, or any other sterile or invasive procedures, other than rectal temperatures or enemas;
- 2. administer medications to any patient.

F. The home health aide shall attend an initial orientation. The orientation and training curricula for home health aides shall be detailed in a policies and procedures manual maintained by the CRCC agency. Provision of orientation and training shall be documented in the employee personnel record. The content of the basic orientation provided to home health aides shall include:

- 1. policies and objectives of the agency;
- 2. duties and responsibilities of a home health aide;
- 3. the role of the home health aide as a member of the health care team;
- 4. emotional problems associated with life-limiting illnesses;
- 5. information on the stages of childhood development;
- 6. information on terminal care, stages of death and dying, and grief;
- 7. principles and practices of maintaining a clean, healthy and safe environment;
- 8. ethics; and
- 9. confidentiality.

G. Home health aide initial training shall include the following areas of instruction:

- 1. assisting patients to achieve optimal activities of daily living;
- 2. documentation;
- 3. procedures for maintaining a clean healthful environment; and
- 4. changes in the patient's condition to be reported to the supervisor.

H. The home health aide must have a minimum of 12 hours of appropriate in-service training annually. In-service training may be prorated for employees working a portion of the year. However, part-time employees who worked throughout the year must attend all 12 hours of in-service training. In-services may be furnished while the aide is providing services to the patient, but must be documented as training.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:451 (February 2005).

§8043. Licensed Practical Nurse

A. The licensed practical nurse (LPN) shall work under the direct supervision of a registered nurse and perform skilled nursing services as delegated by a registered nurse.

B. A licensed practical nurse must:

1. be currently licensed by the Louisiana State Board of Practical Nurse Examiners with no restrictions; and
2. have at least two years full-time experience as an LPN; and
3. when employed by more than one agency, inform all employers and coordinate duties to assure quality provision of services.

C. The LPN shall perform skilled nursing services under the supervision of a registered nurse, in a manner consistent with standard of practice including, but not limited to, such duties as:

1. observing, recording and reporting to the registered nurse or director of nurses on the general physical and mental conditions of the patient;
2. administering prescribed medications and treatments as permitted by state or local regulations;
3. assisting the physician and/or registered nurse in performing specialized procedures;
4. preparing equipment for treatments, including sterilization, and adherence to aseptic techniques;
5. assisting the patient with activities of daily living;
6. documenting each visit made to the patient and incorporate notes into the clinical record within one week of the visit;
7. performing complex wound care, if an in-service is documented for the specific procedure;
8. performing routine venipuncture (phlebotomy) if written documentation of competency is in personnel record. Competency must be evaluated by an RN even if the LPN has completed a certification course; and
9. may receive verbal orders from the physician regarding their assigned patients.

D. An LPN shall not:

1. access any intravenous appliance for any reason;
2. perform supervisory aide visits;
3. develop and/or alter the POC;
4. make an assessment visit;
5. evaluate recertification criteria;
6. make aide assignments; or
7. function as a supervisor of the nursing practice of any registered nurse.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:452 (February 2005).

§8045. Medical Director/Physician Designee

A. The medical director/physician designee is a physician, currently and legally authorized to practice medicine in the state, and knowledgeable about the medical and psychosocial aspects of pediatric palliative care. The medical director reviews, coordinates, and is responsible for the management of clinical and medical care for all patients. The medical director or physician designee may be an employee or a volunteer of the agency. The agency may also contract for the services of the medical director or physician designee. The medical director/physician designee shall be a doctor of medicine or osteopathy licensed to practice in the state of Louisiana.

B. The medical director or physician designee assumes overall responsibility for the medical component of the patient care program and shall include, but not be limited to:

1. serving as a consultant with the attending physician regarding pain and symptom control as needed;
2. serving as the attending physician, if designated by the patient/family unit;
3. reviewing patient eligibility for CRCC services;
4. serving as a medical resource for the interdisciplinary team;
5. developing and coordinating procedures for the provision of emergency medical care;
6. participating in the development of the POC prior to providing care, unless the POC has been established by an attending physician; and
7. participating in the review and update of the POC, unless the plan of care has been reviewed/updated by the attending physician. These reviews must be documented.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:452 (February 2005).

§8047. Occupational Therapist

A. An occupational therapist, when provided, must be licensed by the state of Louisiana and registered by the American Occupational Therapy Association.

B. The occupational therapist shall assist the physician in evaluating the patient's level of functioning by applying diagnostic and prognostic procedures including, but not limited to:

1. providing occupational therapy in accordance with physician's orders and the POC;
2. guiding the patient and family in his/her use of therapeutic, creative, and self-care activities for the purpose of improving function, in a manner consistent with accepted standards of practice;
3. observing, recording, and reporting to the physician and/or interdisciplinary team the patient's reaction to treatment and any changes in the patient's condition;
4. instructing and informing other health team personnel including, when appropriate, home health aides and family members in certain phases of occupational therapy in which they may work with the patient;

5. documenting each visit made to the patient and incorporating notes into the clinical record within one week of the visit;

6. participating in IDT conferences as needed; and

7. preparing a written discharge summary when applicable, with a copy retained in patient's clinical record and a copy forwarded to the attending physician.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:452 (February 2005).

§8049. Pharmacist

A. The CRCC shall employ a pharmacist licensed in the state of Louisiana or have a written agreement with a pharmacist licensed in the state of Louisiana to advise the CRCC facility on ordering, storage, administration, disposal, and record keeping of drugs and biologicals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:453 (February 2005).

§8051. Physical Therapist

A. The physical therapist (PT), when provided, must be currently licensed by the Louisiana State Board of Physical Therapy Examiners. The physical therapist shall assist the physician in evaluating the patient's functional status and physical therapy needs in a manner consistent with standards of practice to include, but not limited to:

1. assisting in the formation of the POC;

2. providing services within the scope of practice as defined by state law governing the practice of physical therapy, in accordance with the POC, and in coordination with the other members of the IDT;

3. observing and reporting to the physician and the IDT, the patient's reaction to treatment and any changes in the patient's condition;

4. instructing and informing participating members of the IDT, the patient, family/care givers, regarding the POC, functional limitations and progress toward goals;

5. documenting each visit made to the patient and incorporating notes into the clinical record within one week of the visit;

6. when physical therapy services are discontinued, preparing a written discharge summary, with a copy retained in the patient's clinical record and a copy forwarded to the attending physician; and

7. participating in IDT conferences as needed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:453 (February 2005).

§8053. Registered Nurse

A. The CRCC facility shall designate a registered nurse (RN) to coordinate the implementation of the POC for each patient.

B. A licensed RN must be currently licensed to practice in the state of Louisiana with no restrictions and:

1. have at least two years full-time experience as a registered nurse; and

2. if employed by more than one agency, he/she must inform all employers and coordinate duties to assure quality service provision.

C. The registered nurse shall:

1. identify the patient's physical, psychosocial, and environmental needs and reassess as needed;

2. provide nursing services in accordance with the POC;

3. document problems, appropriate goals, interventions, and patient/family response to CRCC care;

4. collaborate with the patient/family, attending physician and other members of the IDT in providing patient and family care;

5. instruct patient/family in self-care techniques when appropriate;

6. supervise ancillary personnel and delegate responsibilities when required;

7. complete and submit accurate and relevant clinical notes regarding the patient's condition and incorporate into the clinical record within one week of the visit;

8. prepare specific written instructions for patient care when home health aide services are provided;

9. supervise and evaluate the home health aides ability to perform assigned duties, to relate to the patient and to work effectively as a member of the health care team;

10. when home health aides are assigned, will perform supervisory visits to the patient's residence at least every 30 days to assess relationships and determine whether goals are being met; and

11. document supervision, to include the aide/patient/family relationships, services provided and instructions and comments given, as well as other requirements on the clinical notes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:453 (February 2005).

§8055. Social Worker

A. The social worker shall have a master's degree from a school of social work and be licensed by the Louisiana State Board of Social Work Examiners. The social worker shall have documented clinical experience appropriate to the counseling and casework needs of children with life-limiting illnesses and their families. When the social worker is employed by one or more agencies he/she must inform all employers and cooperate and coordinate duties to assure the highest performance of quality when providing services to the patient and family.

B. The social worker shall assist the physician and other IDT members in understanding significant social and emotional factors relating to the patient's health status and shall include, but not be limited to:

1. assessment of the social and emotional, and familial factors having an impact on the patient's health status;

2. assisting in the formulation of the POC;

3. providing services within the scope of practice as defined by state law and in accordance with the POC;

4. coordination with other IDT members and participating in IDT conferences;

5. preparing clinical and/or progress notes and incorporate them into the clinical record within one week of the visit;

6. participating in discharge planning, and in-service programs related to the needs of the patient and family;
7. acting as a consultant to other members of the IDT; and
8. when medical social services are discontinued, submitting a written summary of services provided, including an assessment of the patient's current status, to be retained in the clinical record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:453 (February 2005).

§8057. Speech Pathologist

A. A speech pathologist, when provided, must be licensed by the Louisiana Board of Examiners for Speech-Language Pathology and Audiology. The speech pathologist shall assist the physician in evaluation of the patient to determine the type of speech or language disorder and the appropriate corrective therapy in a manner consistent with standards of practice to include, but not limited to:

1. providing rehabilitative services for speech and language disorders;
2. observing, recording and reporting to the physician and the IDT the patient's reaction to treatment and any changes in the patient's condition;
3. instructing other health personnel and family members in methods of assisting the patient to improve and correct speech disabilities;
4. communicating with the registered nurse, director of nurses, and/or the IDT the need for a continuation of speech pathology services for the patient;
5. participating in IDT conferences, as needed;
6. documenting each visit made to the patient and incorporating notes in the clinical record within one week of the visit; and
7. preparing a written discharge summary as indicated with a copy retained in patient's clinical record and a copy forwarded to the attending physician.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:454 (February 2005).

§8059. Volunteers

A. Volunteers play a vital role in enhancing the quality of care delivered to the patient/family by encouraging community participation in the overall CRCC program. Volunteers who provide patient care and support services according to their experience and training must be in compliance with agency policies, and under the supervision of a CRCC employee. Volunteers shall be mature, nonjudgmental, caring individuals supportive of the CRCC concept of care, willing to serve others, and appropriately oriented and trained. Volunteers who are qualified to provide professional services must meet all standards associated with their specialty area.

B. The volunteer shall:

1. provide assistance to the CRCC program, and/or patient/family in accordance with designated assignments;
2. provide input into the plan of care and interdisciplinary group meetings, as appropriate;
3. document services provided;

4. maintain strict patient/family confidentiality; and
5. communicate any changes or observations to the assigned supervisor.

C. The volunteers must receive appropriate documented training which shall include at a minimum:

1. an introduction to CRCC;
2. the role of the volunteer in CRCC;
3. concepts of death and dying;
4. communication skills;
5. care and comfort measures;
6. diseases and medical conditions;
7. stages of child development;
8. the concept of the CRCC family;
9. stress management;
10. bereavement;
11. infection control;
12. safety;
13. confidentiality;
14. patient rights; and
15. the role of the IDT.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:454 (February 2005).

Subchapter D. Patient Care Services

§8067. Admission Criteria

A. The CRCC shall have written policies to be followed in making decisions regarding acceptance of patients for care. Decisions are based upon medical, physical and psychosocial information provided by the patient's attending physician, the patient/family and the interdisciplinary team. The admission criteria shall include:

1. the ability of the agency to provide core services on a 24-hours basis and provide for or arrange for non-core services to the extent necessary to meet the needs of individuals for care that is reasonable and necessary for the palliation and management of life-limiting illness and related conditions;
2. documentation of a life-threatening illness signed by a physician;
3. assessment of the patient/family needs and desire for CRCC services;
4. informed consent signed by the patient's representative who is authorized in accordance with state law to elect the care, which will include the purpose and scope of CRCC services; and
5. patient meets all other criteria required by any applicable payor sources.

B. Admission Procedures. Patients are to be admitted only upon the order of the patient's physician. An assessment visit shall be made by a registered nurse, who will assess the patient's needs. This assessment shall occur within 48 hours of referral for admission, unless otherwise ordered by the physician or unless a request for delay is made by the patient/family. Documentation at admission will be retained in the clinical record and shall include:

1. signed consent forms;
2. signed patient's rights statement;
3. clinical data including physician order for care;
4. patient release of information;
5. orientation of the patient/care giver, which includes:

- a. advanced directives;
 - b. agency services;
 - c. patient's rights; and
 - d. agency contact procedures; and
6. physician's documentation of the life-limiting illness.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:454 (February 2005).

§8069. Plan of Care (POC)

A. A written plan of care is developed for each patient/family by the physician, the medical director or physician designee and the IDT. The care provided to an individual must be in accordance with the POC.

B. At least one of the persons involved in developing the POC must be the registered nurse who conducted the initial assessment. Within three days of the assessment, the IDT must establish the POC. The POC shall be signed by the physician and an appropriate member of the IDT.

C. At a minimum the POC will include:

- 1. an assessment of the individual's needs and identification of services;
- 2. detailed description of the scope and frequency of services needed to meet the patient's and family's needs;
- 3. identification of problems with realistic and achievable goals and objectives;
- 4. medical supplies and appliances, including drugs and biologicals needed for the palliation and management of the life-limiting illness and related conditions;
- 5. patient/family understanding, agreement and involvement with the POC; and
- 6. recognition of the patient/family's psychological, social, religious and cultural variables, values, strengths, and risk factors.

D. The POC shall be incorporated into the clinical record within one week of its completion.

E. The CRCC shall designate a registered nurse to coordinate the implementation of the POC for each patient.

F. The plan of care shall be reviewed and updated when the patient's condition changes, and at a minimum every 90 days for home care and every 14 days for inpatient care, collaboratively with the IDT and the physician.

G. the agency shall have documented policies and procedures for the following:

- 1. the physician's participation in the development, revision, and approval of the POC. This is evidenced by a change in patient orders and documented communication between CRCC staff and the physician;
- 2. physician orders must be signed and dated in a timely manner, not to exceed 30 days.

H. The agency shall have documentation that the patient's condition and POC is reviewed and the POC updated, even when the patient's condition does not change.

I. The CRCC shall adhere to the following additional principles and responsibilities:

- 1. an assessment of the patient/family needs and desire for services and the CRCC programs' specific admission, transfer, and discharge criteria to determine any changes in services;
- 2. core services routinely available to CRCC patients on a 24-hour basis, seven days a week;

3. all other covered services available to the extent necessary to meet the needs of individuals for care that is reasonable and necessary for the palliation and management of a life-limiting illness and related conditions;

4. case-management provided and an accurate and complete documented record of services and activities describing care of patient/family is maintained;

5. collaboration with other providers to ensure coordination of services;

6. maintenance of professional management responsibility and coordination of the patient/family care regardless of the setting;

7. maintenance of contracts/agreements for the provision of services not directly provided by the CRCC;

8. provision or access to emergency medical care;

9. when the patient is admitted to a setting where CRCC care cannot be delivered, CRCC adheres to standards, policies and procedures on transfer and discharge and facilitates the patient's transfer to another care provider;

10. maintenance of appropriately qualified IDT health care professionals and volunteers to meet the patient's need;

11. maintenance and documentation of a volunteer staff that provide administrative and/or direct patient care. The CRCC must document a continuing level of volunteer activity; and

12. coordination of the IDT, as well as of volunteers, by a qualified health care professional, to assure continuous assessment, continuity of care and implementation of the POC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:455 (February 2005).

§8071. Pharmaceutical Services

A. The CRCC facility shall ensure that pharmaceutical services are provided under the directions of a pharmacist licensed to practice in the state of Louisiana. The facility shall ensure that pharmaceutical services are provided in accordance with appropriate methods and procedures for the storage, dispensing and administering of drugs and biologicals. The CRCC facility is responsible for ensuring that pharmaceutical services are provided in accordance with accepted professional principles and appropriate federal, state, and local laws, whether drugs and biologicals are obtained from community or institutional pharmacists or stocked by the facility. The CRCC shall ensure the appropriate monitoring and supervision of the pharmaceutical needs of the patient, and have written policies governing prescribing, administering, controlling, storing and disposing of all biologicals and drugs.

B. The CRCC shall provide for the pharmaceutical needs of the patient, consistent with the Board of Pharmacy regulations.

C. The CRCC shall institute procedures which protect the patient from medication errors.

D. CRCC procedures shall provide verbal and written instructions to patient and family as indicated.

E. CRCC policies and procedures shall describe which drugs and treatments are administered by the agency. All drugs shall be administered in compliance with the needs of the client and applicable laws and regulations.

F. The CRCC pharmacy shall have a pharmacy permit issued by the Louisiana Board of Pharmacy to allow ordering, storage, dispensing, and delivering of legend prescriptive orders. The CRCC shall have a current controlled dangerous substance license and a DEA registration. Pharmacy services shall be directed by a registered pharmacist licensed to practice in Louisiana.

G. A physician must order all medications for the patient.

1. If the medication order is verbal, the physician shall give it only to a licensed nurse, pharmacist, or another physician; and the individual receiving the order shall record and sign it immediately.

2. All orders (to include telephone and/or verbal) shall be signed by the prescribing physician in a timely manner, not to exceed 30 days.

H. Patients shall be accurately identified prior to administration of a medication.

1. Medications shall be administered only by a physician, a licensed nurse, the patient, or the parent or guardian, if his or her attending physician has approved.

2. Physicians' orders shall be checked at least daily to assure that changes are noted.

3. Drugs and biologicals shall be administered as soon as possible after dose is prepared for distribution, not to exceed two hours.

4. Each patient shall have an individual medication record (MAR) on which the dose of each drug administered shall be properly recorded by the person administering the drug to include:

a. name, strength, and dosage of the medication;
b. method of administration to include site, if applicable;

c. times of administration;

d. the initials of persons administering the medication (the initials shall be identified on the MAR to identify the individual by name);

e. medications administered on a "PRN" or as needed basis shall be recorded in a manner as to explain the reason for administration and the results obtained. The CRCC shall have a procedure to define its methods of recording these medications.

f. medications brought to the CRCC facility by the patient or other individuals for use by that patient shall be accurately identified as to name and strength, properly labeled, stored in accordance with facility policy and shall be administered to the patient only upon the written orders of the attending physician;

g. medications shall not be retained at the patient's bedside nor shall self-administration be permitted except when ordered by the physician. These medications shall be appropriately labeled and safety precautions taken to prevent unauthorized usage;

h. medication errors and drug reactions shall be immediately reported to the director of nurses, pharmacist and physician and an entry made in the patients' medical record and/or an incident report. This procedure shall include recording and reporting to the physician the failure to administer a drug, for any reason other than refusal of a patient to take a drug. The refusal of a patient to take a drug shall be reported to the DON and the physician and an entry made in the patients' medical record;

i. the nurses station or medicine room for all CRCC facilities shall have readily available items necessary for the proper administration and accounting of medications;

j. each CRCC facility shall have available current reference materials that provide information on the use of drugs, side effects and adverse reactions to drugs and the interactions between drugs.

I. Each CRCC facility shall have a procedure for at least quarterly monitoring of medication administration. This monitoring shall be accomplished by a registered nurse or a pharmacist, to assure accurate administration and recording of all medications.

J. Procedures for storing and disposing of drugs and biologicals shall be established and implemented by the CRCC facility.

1. In accordance with state and federal laws, all drugs and biologicals shall be stored in locked compartments under proper temperature controls and only authorized personnel shall have access to the keys. A separately locked compartment shall be provided for storage of all controlled drugs and other drugs subject to abuse.

2. Controlled drugs no longer needed by the patient shall be disposed of in compliance with state requirements. In the absence of state requirements, the pharmacist and a registered nurse shall dispose of the drugs and prepare a record of the disposal. Each CRCC shall establish procedures for release of patient's own medications upon discharge or transfer of the patient. An entry of such release shall be entered in the medical record to include drugs released, amounts, who received the drugs and signature of the person carrying out the release.

3. There shall be a medicine room or drug preparation area at each nurses' station of sufficient size for the orderly storage of drugs, both liquid and solid dosage forms and for the preparation of medications for patient administration within the unit. In the event that a drug cart is used for storage and administration of drugs, the room shall be of sufficient size to accommodate placement of the cart.

4. There shall be a sink provided with hot and cold water in or near the medicine room or medication preparation area for washing hands or cleaning containers used in medicine preparation. Paper towels and soap dispensers shall be provided.

5. Sufficient lighting shall be provided and the temperature of the medicine storage area shall not be lower than 48°F or above 85°F and the room shall have adequate ventilation.

6. Drugs and biologicals, including those requiring refrigeration, shall be stored within the medicine room or shall have separate locks if outside the medicine room. The refrigeration shall have a thermometer and be capable of maintaining drugs at the temperature recommended by the manufacturer of the drug.

7. No laboratory solutions or materials awaiting laboratory pickup or foods shall be stored in the same storage area (i.e., cupboard, refrigerator, or drawer) with drugs and biologicals. The areas designated for drug and biological storage shall be clearly marked.

8. The drug or medicine rooms shall be provided with safeguards, including locks on doors and bars on accessible windows, to prevent entrance by unauthorized persons.

a. Only authorized, designated personnel shall have access to the medicine storage area.

b. External use only drugs shall be plainly labeled and stored separate from drugs and biologicals. No poisonous substance shall be kept in the kitchen, dining area, or any public spaces or rooms. Storage within the drug or medicine room of approved poisonous substances intended for legitimate medical use, provided that such substances are properly labeled and stored in accordance with applicable federal and state law, shall not be prohibited.

9. The CRCC shall develop policies and procedures for maintaining an emergency medicine cabinet for the purpose of keeping a minimum amount of stock medications that may be needed quickly or after regular duty hours. The following rules shall apply to such a cabinet.

a. The contents of the emergency medicine cabinet shall be approved by the CRCC pharmacist and members of the medical and clinical staff responsible for the development of policies and procedures.

b. There shall be a minimum number of doses of any medication in the emergency medicine cabinet based upon the established needs of the CRCC facility.

c. There shall be records available to show amount received, name of patient and amount used, prescribing physician, time of administration, name of individual removing and using the medication, and the balance on hand.

d. There shall be written procedures for utilization of the emergency medicine cabinet with provisions for prompt replacement of used items.

e. The emergency medicine cabinet shall be inspected at least monthly replacing outdated drugs and reconciliation of its prior usage. Information obtained shall be included in a monthly report.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:455 (February 2005).

§8073. Pathology and Laboratory Services

A. The CRCC shall provide or have access to pathology and laboratory services which comply with Clinical Laboratory Improvement Amendments (CLIA) guidelines and meet the patient's needs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:457 (February 2005).

§8075. Discharge/Transfer

A. The CRCC shall provide adequate and appropriate patient/family information at the time discharge or transfer.

B. The CRCC shall develop appropriate policies/procedures for discharge planning.

C. The CRCC shall clearly document the reason for discharge. The CRCC patient shall be discharged only under following circumstances:

1. change in status of the life-limiting illness;
2. if the safety/well being of the patient or of the CRCC staff is compromised. The CRCC shall make every effort to resolve these problems satisfactorily before discharge. All efforts by the CRCC to resolve the problem shall be documented in detail in the patient's clinical record;

3. patient no longer qualifies for CRCC services due to age;

4. patient/family's noncompliance with the POC;

5. if the patient transfers to another agency or services; or

6. when the patient's representative elects to discontinue services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:457 (February 2005).

§8077. Patient Rights and Responsibilities

A. The CRCC shall ensure that the patient has the right to:

1. be cared for by a team of professionals who provides high quality comprehensive services as needed and appropriate for patient/family;

2. have a clear understanding of the availability of CRCC services;

3. receive appropriate and compassionate care regardless of race, gender, creed, disability, sexual orientation or the ability to pay for services rendered;

4. be fully informed regarding patient status in order to participate in the POC. The professional team shall assist patient/family in identifying which services and treatments will help attain these goals;

5. be fully informed regarding the potential benefits and risks of all medical treatments or services suggested, and to accept or refuse those treatments and/or services as appropriate to patient/family personal wishes;

6. be treated with respect and dignity;

7. have patient/family trained in effective ways of caring for the patient;

8. confidentiality with regard to provision of services and all client records, including information concerning patient/family health status, as well as social, and/or financial circumstances. The patient information and/or records shall be released only with patient/family's written consent, and or as required by law;

9. voice grievances concerning patient care, treatment, and/or respect for person or privacy without being subject to discrimination or reprisal, and have any such complaints investigated by the CRCC; and

10. be informed of any fees or charges in advance of services for which patient/family may be liable. Patient/family has the right to access any insurance or entitlement program for which patient may be eligible.

B. An informed consent form that specifies the type of care and services that may be provided as CRCC care during the course of the illness shall be obtained, either from the individual or representative.

C. The patient/family has the responsibility to:

1. participate in developing the POC and update as his or her condition/needs change;

2. provide CRCC with accurate and complete health information;

3. remain under a doctor's care while receiving CRCC services; and

4. assist CRCC staff in developing and maintaining a safe environment in which patient care can be provided.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:457 (February 2005).

§8079. Clinical Records

A. In accordance with accepted principles of practice the CRCC shall establish and maintain a clinical record for every individual receiving care and services. The record shall be complete, promptly and accurately documented, readily accessible and systematically organized to facilitate retrieval. The clinical record shall contain all pertinent past and current medical, nursing, social, and other therapeutic information, including the current POC under which services are being delivered.

B. CRCC records shall be maintained in a distinct location and not mingled with records of other types of health care related agencies.

C. Original clinical records shall be kept in a safe and confidential area which provides convenient access to clinicians.

D. The agency shall have policies addressing who is permitted access to the clinical records. No unauthorized person shall be permitted access to the clinical records.

E. All clinical records shall be safeguarded against loss, destruction and unauthorized use.

F. Records for individuals under the age of majority shall be kept in accordance with current state and federal law.

G. When applicable, the agency shall obtain a signed Release of Information Form from the patient and/or the patient's family. A copy shall be retained in the record.

H. The clinical records shall contain a comprehensive compilation of information including, but not limited to:

1. initial and subsequent plans of care and initial assessment;
2. documentation of a life-limiting diagnosis;
3. written physician's orders for admission and changes to the POC;
4. current clinical notes {at least the past 60 days};
5. plan of care;
6. signed consent and authorization forms;
7. pertinent medical history; and
8. identifying data, including:
 - a. name;
 - b. address;
 - c. date of birth;
 - d. sex;
 - e. agency case number; and
 - f. next of kin.

I. Entries are made for all services provided and are signed by the staff providing the service.

J. Complete documentation of all services and events (including evaluations, treatments, progress notes, etc.) are recorded whether furnished directly by staff or by arrangement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:458 (February 2005).

§8081. Nursing Services

A. There shall be an organized nursing service that provides 24-hour nursing services. The nursing services shall be under the direction of a director of nursing, who is a

registered nurse licensed to practice in Louisiana, employed full time by only one licensed agency. There shall be a similarly qualified registered nurse available to act in the absence of the director of nursing.

B. The CRCC facility shall have staff on the premises on a 24-hour a day, seven-day a week basis. There shall be a registered nurse on duty at all times when patients are in the facility. In addition, the facility shall provide nursing services sufficient to meet the total nursing needs of the patients in the facility. When there are no patients in the CRCC facility, the facility shall have a registered nurse on-call to be immediately available to the CRCC facility. The services provided must be in accordance with the patient's plan of care. Each shift shall include at least two direct patient care staff, one of which must be a registered nurse who provides direct patient care. The nurse to patient ratio shall be at least one nurse to every eight patients. In addition, there shall be sufficient number of direct patient care staff on duty to meet the patient care needs.

C. Written nursing policies and procedures shall define and describe the patient care provided.

D. Nursing services shall be either furnished and/or supervised by a registered nurse and all nursing services shall be evaluated by a registered nurse.

E. A registered nurse shall assign the nursing service staff for each patient in the CRCC facility. The CRCC facility shall provide 24-hour nursing services sufficient to meet the total nursing needs of the patient and which are in accordance with the patient's plan of care. Staffing shall be planned so that each patient receives treatments, medications and diet as prescribed, and is kept clean, well-groomed, and protected from accident, injury, and infection. Nursing services staff shall be assigned clinical and/or management responsibilities in accordance with education, experience and the current Louisiana Nurse Practice Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:458 (February 2005).

§8083. Nutritional Services

A. Nutritional services shall be under the supervision of a qualified registered dietitian, who is employed either full time, part time, on a consulting or volunteer basis. If the registered dietitian is not full time, there shall be a full-time dietary manager who is responsible for the daily management of dietary services.

B. The registered dietitian shall be responsible for assuring that quality nutritional care is provided to patients by providing and supervising the nutritional aspects of patient care.

C. The CRCC facility shall have a dietary manager who is responsible for:

1. planning menus that meet the nutritional needs of each patient, following the orders of the patient's physician and, to the extent medically possible, the recommended dietary allowances of the Food and Nutrition Board of the National Academy of Sciences. There shall be a current therapeutic diet manual approved by the dietitian and medical staff, and readily available to all medical, nursing, and food service personnel, which shall be the guide used for ordering and serving diets;

2. supervising the meal preparation and service to ensure that the menu plan is followed.

D. The CRCC facility shall:

1. serve at least three meals or their equivalent each day at regular intervals with not more than 14 hours between a substantial evening meal and breakfast;

2. include adequate nutritional services to meet the patient's dietary needs and food preferences, including the availability of frequent, small, or mechanically-altered meals 24 hours a day;

3. be designed and equipped to procure, store, prepare, distribute, and serve all food under the requirements of Part XXIII (Retail Food Establishments) of the Louisiana State Sanitary Code (LAC 51:XXIII); and

4. provide a nourishment station which contains equipment to be used between scheduled meals such as a warming device, refrigerator, storage cabinets and counter space. There shall be provision made for the use of small appliances and storage. This area shall be available for use by the patient, the patient's family, volunteers, guests and staff.

E. Sanitary Conditions

1. Food shall be free from spoilage, filth, or other contamination and shall be safe for human consumption.

2. All food provided by the CRCC shall be procured from sources that comply with all laws and regulations related to food and food labeling.

3. All food shall be stored, prepared, distributed and served under sanitary conditions to prevent food borne illness. This includes keeping all readily perishable food and drink at or below 41°F, except when being prepared and served. Refrigerator temperatures shall be maintained at 41°F or below; freezers at 0°F or below.

4. Hot foods shall leave the kitchen or steam table at or above 140°F. In-room delivery temperatures shall be maintained at 120°F or above for hot foods and 50°F or below for cold items. Food shall be covered during transportation and in a manner that protects it from contamination while maintaining required temperatures.

5. All equipment and utensils used in the preparation and serving of food shall be properly cleansed, sanitized and stored. This includes maintaining a water temperature in dish washing machines at 140°F during the wash cycle (or according to the manufacturer's specifications or instructions) and 180°F for the final rinse. Low temperature machines shall maintain a water temperature of 120°F with 50 ppm (parts per million) of hypochlorite (household bleach) on dish surfaces. For manual washing in a three-compartment sink, a wash water temperature of 75°F with 50 ppm of hypochlorite or equivalent or 12.5 ppm of iodine; or a hot water immersion at 171°F for at least 30 seconds shall be maintained. An approved lavatory shall be convenient and equipped with hot and cold water tempered by means of a mixing valve or combination faucet for dietary services staff use. Any self-closing, slow-closing, or metering faucet shall be designed to provide a flow of water for at least 15 seconds without the need to reactivate the faucet.

6. No staff, including dietary staff, shall store personal items within the food preparation and storage areas.

7. Dietary staff shall use good hygienic practices. Staff with communicable diseases or infected skin lesions

shall not have contact with food if that contact may transmit the disease.

8. Toxic items such as insecticides, detergents, polishes and the like shall be properly stored, labeled and used.

9. Garbage and refuse shall be kept in durable, easily cleanable, insect and rodent-proof containers that do not leak and do not absorb liquids. Containers used in food preparation and utensil washing areas shall be kept covered after they are filled.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:458 (February 2005).

Subchapter E. Administration

§8089. Agency Operations

A. Premises (see definition of *CRCC premises*)

1. The CRCC must have a distinct telephone number. If the telephone number is shared with other health care related agencies, the telephone operator(s) shall demonstrate knowledge and ability to distinguish and direct calls to the appropriate persons. If an answering service is used after normal hours, there shall be evidence of distinct CRCC staff and the answering service should be able to direct calls to the appropriate persons for each service. Staff shall be able to distinguish and describe the scope and delineation of all activities being provided by the CRCC.

2. Staff working areas shall be designed so that when planning for services, patient confidentiality is maintained.

3. The CRCC shall not share office space with a non-health care related entity. When office space is shared with another health care related entity, the CRCC shall operate separate and apart.

B. Hours of Operation

1. CRCC provides medical and nursing services 24 hours a day, seven days per week. In addition the facility shall ensure staff availability to assess and meet changing patient/family needs, provide instruction and support, and conduct additional assessment or treatment, 24 hours a day, seven days per week.

2. If the CRCC has no inpatients, there shall be an RN on call at all times.

C. All policies and procedures:

1. shall be written, current, and annually reviewed by appropriate personnel;

2. shall contain policies and procedures specific to agency addressing personnel standards and qualifications, personnel records, agency operations, emergency procedures, patient care standards, patient rights and responsibilities, problem and complaint resolution, purpose and goals of operation, the defined service area, emergency/disaster procedures, as well as regulatory and compliance issues; and

3. shall meet or exceed requirements of the licensing standards and all applicable federal, state, and local laws.

D. Operational Requirements

1. CRCC's responsibility to the community:

a. shall not accept orders to assess or admit from any source other than a licensed physician or authorized physician representative (e.g., hospital discharge planner);

- b. shall use only factual information in advertising;
- c. shall not participate in solicitation;
- d. shall not accept as a patient any person who does not have a diagnosis of a life-limiting illness and meet the age requirements;
- e. shall develop policies/procedures for patients with no or limited payor source;
- f. shall have policies and procedures and a written plan for emergency operations in case of disaster;
- g. is prohibited from harassing or coercing a prospective patient or staff member to use a specific facility or to change to another CRCC;
- h. shall have policies and procedures for post-mortem care in compliance with all applicable federal, state, and local laws;
- i. may participate as community educators in community/health fairs; and
- j. may provide free non-invasive diagnostic tests, such as blood pressure screening.

2. CRCC's responsibility to the patient shall include, but is not limited to:

- a. being in compliance with licensing standards and all applicable federal, state, and local laws at all times;
- b. acting as the patient advocate in medical decisions affecting the patient;
- c. protecting the patient from unsafe skilled and unskilled practices;
- d. protecting the patient from being harassed, bribed, and or any form of mistreatment by an employee or volunteer of the agency;
- e. providing patient information on the patient's rights and responsibilities;
- f. providing information on advanced directives in compliance with all applicable federal, state, and local laws;
- g. protecting and assuring that patient's rights are not violated;
- h. encouraging the patient/family to participate in developing the POC and provision of services;
- i. making appropriate referrals for family members outside the CRCC's service area for bereavement follow-up.

3. Responsibility of the CRCC to the staff shall include, but is not limited to:

- a. providing a safe working environment;
- b. having safety and emergency preparedness programs that conform with federal, state, and local requirements and that include:
 - i. a plan for reporting, monitoring, and follow-up on all accidents, injuries, and safety hazards;
 - ii. documentation of all reports, monitoring activity, and follow-up actions, education for patient/family, care givers, employees and volunteers on the safe use of medical equipment;
 - iii. evidence that equipment maintenance and safety requirements have been met;
 - iv. policies and procedures for storing, accessing, and distributing abusable drugs, supplies and equipment;
 - v. a safe and sanitary system for identifying, handling, and disposing of potentially infectious biomedical wastes; and
 - vi. a policy regarding use of smoking materials in all care settings;

- c. have policies which encourage realistic performance expectations;
- d. provide adequate time on schedule for required travel;
- e. provide adequate information, in-service training, supplies, and other support for all employees to perform to the best of their ability; and
- f. provide in-service training to promote effective, quality CRCC care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:459 (February 2005).

§8091. Contract Services

A. The administrator and the DON shall be direct employees of the CRCC.

B. Whenever services are provided by an outside agency or individual, a legally binding written agreement shall be effected. The legally binding written agreement shall include at least the following items:

- 1. identification of the services to be provided;
- 2. a stipulation that services shall be provided only with the express authorization of the CRCC;
- 3. the manner in which the contracted services are coordinated, supervised, evaluated by the CRCC;
- 4. the delineation of the role(s) of the CRCC and the contractor in the admission process, patient/family assessment, and the IDT conferences;
- 5. requirements for documenting that services are furnished in accordance with the agreement;
- 6. the qualifications of the personnel providing the services;
- 7. assurance that the personnel contracted complete the clinical record in the same timely manner as required by the staff personnel of the CRCC;
- 8. payment fees and terms; and
- 9. statement that the CRCC retains responsibility for appropriate training of the personnel who provide care under the agreement.

C. The CRCC shall document review of contracts on an annual basis.

D. The CRCC shall coordinate services with contract personnel to assure continuity of patient care.

E. CRCC shall maintain professional management responsibilities for those services and ensures that they are furnished in a safe and effective manner by qualified persons and in accordance with the patient's POC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:460 (February 2005).

§8093. Quality Assurance

A. The CRCC shall have an on-going comprehensive, integrated, self-assessment quality improvement process which provides assurance that patient care is provided at all times in compliance with accepted standards of professional practice.

B. The CRCC shall have written plans, policies and procedures addressing quality assurance.

C. The CRCC shall monitor and evaluate its resource allocation regularly to identify and resolve problems with the utilization of its services, facilities and personnel.

D. The CRCC shall follow a written plan for continually assessing and improving all aspects of operations which include:

1. goals and objectives;
2. the identity of the person responsible for the program;
3. a system to ensure systematic, objective regular reports are prepared and distributed to the governing body and any other committees as directed by the governing body;
4. the method for evaluating the quality and the appropriateness of care;
5. a method for resolving identified problems; and
6. a method for implementing practices to improve the quality of patient care.

E. The plan shall be reviewed at least annually and revised as appropriate by the governing body.

F. Quality assessment and improvement activities shall be based on the systematic collection, review, and evaluation of data which, at a minimum, includes:

1. services provided by professional and volunteer staff;
2. audits of patient charts;
3. reports from staff, volunteers, and clients about services;
4. concerns or suggestions for improvement in services;
5. organizational review of the CRCC program;
6. patient/family evaluations of care; and
7. high-risk, high volume and problem-prone activities.

G. When problems are identified in the provision of CRCC care, there shall be evidence of corrective actions, including ongoing monitoring, revisions of policies and procedures, educational intervention and changes in the provision of services.

H. The effectiveness of actions taken to improve services or correct identified problems shall be evaluated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:460 (February 2005).

§8095. Cessation of Business

A. If at any time the agency is no longer operational, the license shall be deemed to be invalid and shall be returned to DHH within five working days.

B. The agency owner shall be responsible for notifying DHH of the location of all records and a contact person.

- C. In order to be operational, an agency shall:
1. have had at least 10 new patients admitted since the last annual survey;
 2. be able to accept referrals at any time;
 3. have adequate staff to meet the needs of their current patients;
 4. have required designated staff on the premises at all times during operation;
 5. be immediately available by telecommunications 24 hours per day. A registered nurse shall answer calls from patients and other medical personnel after hours; and

6. be open for the business of providing CRCC services to those who need assistance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:461 (February 2005).

Frederick P. Cerise, M.D., M.P.H.
Secretary

0502#047

RULE

**Department of Insurance
Office of the Commissioner**

Long-Term Care Insurance (LAC 37:XIII.Chapter 19)

The Department of Insurance, pursuant to the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., has amended Regulation 46 (R.S. 22:1731-1741) regarding Long-Term Care Insurance.

The proposed regulation was necessitated by the passage of Acts 2004, No. 780 of the Regular Session of the Louisiana Legislature, and was amended to accomplish those purposes required by said Act, which expanded the scope of long-term care insurance to include, among other things, renewal policies, as amended; to provide for definitions; to provide for disclosures and performance standards; to provide for nonforfeiture benefits; to provide for regulations; and to provide for penalties and other related matters. Additionally, the amendments establish standards for the disclosure of rating practices to consumers, initial filing requirements, and premium rate increases as well as clarify requirements and existing laws relative to long-term care insurance. The amendments also change the non-forfeiture requirements, update the personal worksheet and add the long-term care insurance potential rate increase disclosure form. The Department of Insurance is adopting the NAIC Model Regulation in order to implement the NAIC Long-Term Care Insurance Model Act which conforms to state statutes. The proposed amendments affect the following Sections of the LAC 37:XIII: §1901, §1903, §1905, §1909, §1911, §1913, §1915, §1917, §1919, §1921, §1925, §1927, §1929, §1931, §1933, §1935, §1937, §1939, §1941, §1943, §1945, §1949, §1951, §1953, §1955, §1957, §1959 and §1961, Appendices A, B, C, E, F, and G.

The following table shows new placement for some of the current Sections being amended.

Proposed Placement	Current Placement
§1921. Prohibition against Post-Claim Underwriting	§1915
§1923. Minimum Standards for Home Health and Community Care Benefits in Long-Term Care Insurance Policies	§1917
§1925. Requirements for Application Forms and Replacement Coverage	§1921
§1927. Reporting Requirements	§1923
§1929. Licensing	§1925
§1931. Discretionary Powers of Commissioner	§1927
§1933. Reserve Standards	§1929
§1935. Loss Ratio	§1931

§1937. Premium Rate Schedule Increases (new)	
§1939. Filing Requirement	§1933
§1941. Filing Requirements for Advertising	§1935
§1943. Standards for Marketing	§1937
§1945. Suitability	§1939
§1947. Prohibition against Pre-Existing Conditions and Probationary Periods in Replacement Policies or Certificates	§1941
§1949. Nonforfeiture Benefit Requirement	§1943
§1951. Standards for Benefit Triggers	§1945
§1953. Additional Standards for Benefit Triggers for Qualified Long-Term Care Insurance Contracts	§1947
§1955. Standard Format Outline of Coverage	§1949
§1957. Requirement to Deliver Shopper's Guide	§1951
§1959. Penalties	§1953
§1961. Appendices A-G	§1955

Title 37

INSURANCE

Part XIII. Regulations

Chapter 19. Regulation 46 Long-Term Care Insurance

§1901. Purpose

A. The purpose of this regulation is to implement R.S. 22:1731-1741, Long-Term Care Insurance Act, to promote the public interest; to promote the availability of long-term care insurance coverage; to protect applicants for long-term care insurance, as defined, from unfair or deceptive sales or enrollment practices; to facilitate public understanding and comparison of long-term care insurance coverages; and to facilitate flexibility and innovation in the development of long-term care insurance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), LR 31:462 (February 2005).

§1903. Applicability and Scope

A. Except as otherwise specifically provided, this regulation applies to all long-term care insurance policies, including qualified long-term care contracts and life insurance policies that accelerate benefits for long-term care delivered, or issued for delivery, in this state on or after February 20, 2005, by insurers; fraternal benefit societies; nonprofit health, hospital and medical service corporations; prepaid health plans; health maintenance organizations; and all similar organizations to the extent they are authorized to issue life or health insurance. Certain provisions of this regulation apply only to qualified long-term care insurance contracts as noted. Renewal policies shall comply with this regulation as amended.

B. Additionally, this regulation is intended to apply to policies having indemnity benefits that are triggered by activities of daily living and sold as disability income insurance, if:

1. the benefits of the disability income policy are dependent upon or vary in amount based on the receipt of long-term care services;
2. the disability income policy is advertised, marketed or offered as insurance for long-term care services; or
3. benefits under the policy may commence after the policyholder has reached Social Security's normal retirement

age unless benefits are designed to replace lost income or pay for specific expenses other than long-term care services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), LR 31:462 (February 2005).

§1905. Definitions

A. For the purpose of this regulation, the terms Applicant, Certificate, Commissioner, Group Long-Term Care Insurance, Long-Term Care Insurance, Policy, and Qualified Long-Term Care Insurance shall have the meanings set forth in R.S. 22:1734. In addition, the following definitions will apply.

Exceptional Increase

a. only those increases filed by an insurer as exceptional for which the commissioner determines the need for the premium rate increase is justified:

i. due to changes in laws or regulations applicable to long-term care coverage in this state; or

ii. due to increased and unexpected utilization that affects the majority of insurers of similar products;

b. except as provided in §1937, exceptional increases are subject to the same requirements as other premium rate schedule increases;

c. the commissioner may request a review by an independent actuary or a professional actuarial body of the basis for a request that an increase be considered an exceptional increase;

d. the commissioner, in determining that the necessary basis for an exceptional increase exists, shall also determine any potential offsets to higher claims costs.

Incidental (as used in §1937.J) that the value of the long-term care benefits provided is less than 10 percent of the total value of the benefits provided over the life of the policy. These values shall be measured as of the date of issue.

Qualified Actuary a member in good standing of the American Academy of Actuaries.

Similar Policy Forms all of the long-term care insurance policies and certificates issued by an insurer in the same long-term care benefit classification as the policy form being considered. Certificates of groups that meet the definition in R.S. 22:1734(4)(a) are not considered similar to certificates or policies otherwise issued as long-term care insurance, but are similar to other comparable certificates with the same long-term care benefit classifications. For purposes of determining similar policy forms, long-term care benefit classifications are defined as follows: institutional long-term care benefits only, non-institutional long-term care benefits only, or comprehensive long-term care benefits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), LR 31:462 (February 2005).

§1909. Policy Practices and Provisions

A. Renewability. The terms *guaranteed renewable* and *noncancellable* shall not be used in any individual long-term care insurance policy without further explanatory language

in accordance with the disclosure requirements of §1913 of this regulation.

1. A policy issued to an individual shall not contain renewal provisions other than *guaranteed renewable* or *noncancellable*.

2. The term *guaranteed renewable* may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums and when the insurer has no unilateral right to make any change in any provision of the policy or rider while the insurance is in force, and cannot decline to renew, except that rates may be revised by the insurer on a class basis.

3. The term *noncancellable* may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums, during which period the insurer has no right to unilaterally make any change in any provision of the insurance or in the premium rate.

4. The term *level premium* may only be used when the insurer does not have the right to change the premium.

5. In addition to the other requirements of §1909.A, a qualified long-term insurance contract shall be guaranteed renewable, within the meaning of Section 7702B(b)(1)(C) of the Internal Revenue Code of 1986, as amended.

B. Limitations and Exclusions. A policy may not be delivered or issued for delivery in this state as long-term care insurance if such policy limits or excludes coverage by type of illness, treatment, medical condition, or accident, except as follows:

1. preexisting conditions or diseases;
2. mental or nervous disorders; however, this shall not permit exclusion or limitation of benefits on the basis of Alzheimer's Disease;
3. alcoholism and drug addiction;
4. illness, treatment, or medical condition arising out of:
 - a. war or act of war (whether declared or undeclared);
 - b. participation in a felony, riot, or insurrection;
 - c. service in the armed forces or units auxiliary thereto;
 - d. suicide (sane or insane), attempted suicide, or intentionally self-inflicted injury; or
 - e. aviation (this exclusion applies only to non-fare paying passengers);
5. treatment provided in a government facility (unless otherwise required by law); services for which benefits are available under Medicare or other governmental program (except Medicaid), any state or federal workers' compensation, employer's liability, or occupational disease law, or any motor vehicle no-fault law; services provided by a member of the covered person's immediate family, and services for which no charge is normally made in the absence of insurance;
6. expenses for services or items available or paid under another long-term care insurance or health insurance policy;
7. in the case of a qualified long-term care insurance contract, expenses for services or items to the extent that the expenses are reimbursable under Title XVIII of the Social Security Act or would be so reimbursable but for the application of a deductible or coinsurance amount;

8. Subsection 1909.B is not intended to prohibit exclusions and limitations by type of provider or territorial limitations.

C. Extension of Benefits. Termination of long-term care insurance shall be without prejudice to any benefits payable for institutionalization, if such institutionalization began while the long-term care insurance was in force and continues without interruption after termination. Such extension of benefits beyond the period the long-term care insurance was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefits and may be subject to any policy waiting period, and all other applicable provisions of the policy.

D. Continuation or Conversion

1. Group long-term care insurance issued in this state on or after the effective date of §1909 shall provide covered individuals with a basis for continuation or conversion of coverage.

2. For the purposes of §1909, a *basis for continuation of coverage* means a policy provision which maintains coverage under the existing group policy when such coverage would otherwise terminate and which is subject only to the continued timely payment of premium, when due. Group policies which restrict provision of benefits and services to, or contain incentives to use certain providers and/or facilities may provide continuation benefits which are substantially equivalent to the benefits of the existing group policy. The commissioner shall make a determination as to the substantial equivalency of benefits, and in doing so, shall take into consideration the differences between managed care and non-managed care plans including, but not limited to, provider system arrangements, service availability, benefit levels, and administrative complexity.

3. For the purposes of §1909, a *basis for conversion of coverage* means a policy provision that an individual whose coverage under the group policy would otherwise terminate or has been terminated for any reason, including discontinuance of the group policy in its entirety or with respect to an insured class, and who has been continuously insured under the group policy (and any group policy which it replaced), for at least six months immediately prior to termination, shall be entitled to the issuance of a converted policy by the insurer under whose group policy he or she is covered, without evidence of insurability.

4. For the purposes of §1909, *converted policy* means an individual policy of long-term care insurance providing benefits identical to or benefits determined by the commissioner to be substantially equivalent to or in excess of those provided under the group policy from which conversion is made. Where the group policy from which conversion is made restricts provision of benefits and services to, or contains incentives to use certain providers and/or facilities, the commissioner, in making a determination as to the substantial equivalency of benefits, shall take into consideration the differences between managed care and non-managed care plans including, but not limited to, provider system arrangements, service availability, benefit levels, and administrative complexity.

5. Written application for the converted policy shall be made, and the first premium due, if any, shall be paid as directed by the insurer not later than 31 days after termination of coverage under the group policy. The

converted policy shall be issued effective on the day following the termination of coverage under the group policy, and shall be renewable annually.

6. Unless the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy from which conversion is made. Where the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy replaced.

7. Continuation of coverage or issuance of a converted policy shall be mandatory, except where:

a. termination of group coverage resulted from an individual's failure to make any required payment of premium or contribution when due; or

b. the terminating coverage is replaced not later than 31 days after termination by group coverage effective on the day following the termination of coverage:

i. providing benefits identical to or benefits determined by the commissioner to be substantially equivalent to or in excess of those provided by the terminating coverage; and

ii. the premium for which is calculated in a manner consistent with the requirements of §1909.D.6.

8. Notwithstanding any other provision of §1909, a converted policy issued to an individual who, at the time of conversion, is covered by another long-term care insurance policy which provides benefits on the basis of incurred expenses, may contain a provision which results in a reduction of benefits payable if the benefits provided under the additional coverage, together with the full benefits provided by the converted policy, would result in payment of more than 100 percent of incurred expenses. Such provision shall only be included in the converted policy if the converted policy also provides for a premium decrease or refund which reflects the reduction in benefits payable.

9. The converted policy may provide that the benefits payable under the converted policy, together with the benefits payable under the group policy from which conversion is made, shall not exceed those that would have been payable had the individual's coverage under the group policy remained in force and effect.

10. Notwithstanding any other provision of §1909, any insured individual whose eligibility for group long-term care coverage is based upon his or her relationship to another person shall be entitled to continuation of coverage under the group policy upon termination of the qualifying relationship by death or dissolution of marriage.

11. For the purposes of §1909, a *managed-care plan* is a health care or assisted living arrangement designed to coordinate patient care or control costs through utilization review, case management, or use of specific provider networks.

E. Discontinuance and Replacement. If a group long-term care policy is replaced by another group long-term care policy issued to the same policyholder, the succeeding insurer shall offer coverage to all persons covered under the previous group policy on its date of termination. Coverage provided or offered to individuals by the insurer and premiums charged to persons under the new group policy:

1. shall not result in any exclusion for pre-existing conditions that would have been covered under the group policy being replaced; and

2. shall not vary or otherwise depend on the individual's health or disability status, claim experience, or use of long-term care services.

F.1. The premium charged to an insured shall not increase due to either:

a. the increasing age of the insured at ages beyond 65; or

b. the duration the insured has been covered under the policy.

2. The purchase of additional coverage shall not be considered a premium rate increase, but for purposes of the calculation required under §1949, the portion of the premium attributable to the additional coverage shall be added to and considered part of the initial annual premium.

3. A reduction in benefits shall not be considered a premium change, but for purposes of the calculation required under §1949, the initial annual premium shall be based on the reduced benefits.

G. Electronic Enrollment for Group Policies

1. In the case of a group defined in R.S. 22:1734(4)(a), any requirement that a signature of an insured be obtained by a producer or insurer shall be deemed satisfied if:

a. the consent is obtained by telephonic or electronic enrollment by the group policyholder or insurer. A verification of enrollment information shall be provided to the enrollee;

b. the telephonic or electronic enrollment provides necessary and reasonable safeguards to assure the accuracy, retention and prompt retrieval of records; and

c. the telephonic or electronic enrollment provides necessary and reasonable safeguards to assure that the confidentiality of individually identifiable information and "privileged information" as defined by applicable state or federal law, is maintained.

2. The insurer shall make available, upon request of the commissioner, records that will demonstrate the insurer's ability to confirm enrollment and coverage amounts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), LR 31:462 (February 2005).

§1911. Unintentional Lapse

A. - A.1.b. ...

c. When the policyholder or certificateholder pays premium for a long-term care insurance policy or certificate through a payroll or pension deduction plan, the requirements contained in §1911.A.1.a need not be met until 60 days after the policyholder or certificateholder is no longer on such a payment plan. The application or enrollment form for such policies or certificates shall clearly indicate the payment plan selected by the applicant.

d. ...

B. Reinstatement. In addition to the requirement in §1911.A.1, a long-term care insurance policy or certificate shall include a provision which provides for reinstatement of coverage, in the event of lapse, if the insurer is provided proof that the policyholder or certificateholder was

cognitively impaired or had a loss of functional capacity before the grace period contained in the policy expired. This option shall be available to the insured, if requested within five months after termination, and shall allow for the collection of past due premium where appropriate. The standard of proof of cognitive impairment or loss of functional capacity shall not be more stringent than the benefit eligibility criteria on cognitive impairment or the loss of functional capacity contained in the policy and certificate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), LR 31:464 (February 2005).

§1913. Required Disclosure Provisions

A. Renewability. Individual long-term care insurance policies shall contain a renewability provision.

1. The provision shall be appropriately captioned, shall appear on the first page of the policy, and shall clearly state that the coverage is guaranteed renewable or noncancellable. This provision shall not apply to policies which do not contain a renewability provision, and under which the right to nonrenew is reserved solely to the policyholder.

2. A long-term care insurance policy or certificate, other than one where the insurer does not have the right to change the premium, shall include a statement that premium rates may change.

B. Riders and Endorsements. Except for riders or endorsements by which the insurer effectuates a request made, in writing, by the insured under an individual long-term care insurance policy, all riders or endorsements added to an individual long-term care insurance policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the individual insured. After the date of policy issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term must be agreed to, in writing and signed by the insured, except if the increased benefits or coverage are required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, such premium charge shall be set forth in the policy, rider, or endorsement.

C. Payment of Benefits. A long-term care insurance policy which provides for the payment of benefits based on standards described as *usual and customary, reasonable and customary* or words of similar import shall include a definition of such terms and an explanation of such terms in its accompanying outline of coverage.

D. Limitations. If a long-term care insurance policy or certificate contains any limitations with respect to pre-existing conditions, such limitations shall appear as a separate paragraph of the policy or certificate and shall be labeled as "Pre-Existing Condition Limitations."

E. Other Limitations or Conditions on Eligibility for Benefits. A long-term care insurance policy or certificate containing post confinement, post-acute care, or recuperative benefits shall set forth a description of such limitations or conditions, including any required number of days of confinement, in a separate Paragraph of the policy or

certificate and shall clearly label such Paragraph, "Limitations or Conditions on Eligibility for Benefits."

F. Disclosure of Tax Consequences. With regard to life insurance policies which provide an accelerated benefit for long-term care, a disclosure statement is required at the time of application for the policy or rider, and at the time the accelerated benefit payment request is submitted, that receipt of these accelerated benefits may be taxable, and that assistance should be sought from a personal tax advisor. The disclosure statement shall be prominently displayed on the first page of the policy or rider and any other related documents. §1913.F shall not apply to qualified long-term care insurance contracts.

G. Benefit Triggers. Activities of daily living and cognitive impairment shall be used to measure an insured's need for long-term care and shall be described in the policy or certificate in a separate provision and shall be labeled "Eligibility for the Payment of Benefits." Any additional benefit triggers shall also be explained in this provision. If these triggers differ for different benefits, explanation of the trigger shall accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too shall be specified.

H. A qualified long-term care insurance contract shall include a disclosure statement in the policy, and in the outline of coverage as contained in §1955.F.3 that the policy is intended to be a qualified long-term care insurance contract under Section 7702B(b) of the Internal Revenue Code of 1986, as amended.

I. A nonqualified long-term care insurance contract shall include a disclosure statement in the policy and in the outline of coverage as contained in §1955.F.3 that the policy is not intended to be a qualified long-term care insurance contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), LR 31:465 (February 2005).

§1915. Required Disclosure of Rating Practices to Consumers

A. This Section shall apply as follows.

1. Except as provided in §1915.A.2, §1915 applies to any long-term care policy or certificate issued in this state on or after August 19, 2005.

2. For certificates issued on or after the effective date of this amended regulation under a group long-term care insurance policy as defined in R.S. 22:1734(4), which policy was in force at the time this amended regulation became effective, the provisions of §1915 shall apply on the policy anniversary following February 19, 2006.

B. Other than policies for which no applicable premium rate or rate schedule increases can be made, insurers shall provide all of the information listed in §1915.B to the applicant at the time of application or enrollment, unless the method of application does not allow for delivery at that time. In such a case, an insurer shall provide all of the information listed in §1915 to the applicant no later than at the time of delivery of the policy or certificate:

1. a statement that the policy may be subject to rate increases in the future;

2. an explanation of potential future premium rate revisions, and the policyholder's or certificateholder's option in the event of a premium rate revision;

3. the premium rate or rate schedules applicable to the applicant that will be in effect until a request is made for an increase;

4. a general explanation for applying premium rate or rate schedule adjustments that shall include:

a. a description of when premium rate or rate schedule adjustments will be effective (e.g., next anniversary date, next billing date, etc.); and

b. the right to a revised premium rate or rate schedule as provided in §1915.B.3 if the premium rate or rate schedule is changed;

5.a. information regarding each premium rate increase on this policy form or similar policy forms over the past 10 years for this state or any other state that, at a minimum, identifies:

i. the policy forms for which premium rates have been increased;

ii. the calendar years when the form was available for purchase; and

iii. the amount or percent of each increase. The percentage may be expressed as a percentage of the premium rate prior to the increase, and may also be expressed as minimum and maximum percentages if the rate increase is variable by rating characteristics.

b. the insurer may, in a fair manner, provide additional explanatory information related to the rate increases;

c. an insurer shall have the right to exclude from the disclosure premium rate increases that only apply to blocks of business acquired from other nonaffiliated insurers or the long-term care policies acquired from other nonaffiliated insurers when those increases occurred prior to the acquisition;

d. if an acquiring insurer files for a rate increase on a long-term care policy form acquired from nonaffiliated insurers or a block of policy forms acquired from nonaffiliated insurers on or before the later of the effective date of §1915 or the end of a 24-month period following the acquisition of the block or policies, the acquiring insurer may exclude that rate increase from the disclosure. However, the nonaffiliated selling company shall include the disclosure of that rate increase in accordance with §1915.B.5.a of this Paragraph;

e. if the acquiring insurer in §1915.B.5.d above files for a subsequent rate increase, even within the 24-month period, on the same policy form acquired from nonaffiliated insurers or block of policy forms acquired from nonaffiliated insurers referenced in §1915.B.5.d, the acquiring insurer shall make all disclosures required by §1915.B.5, including disclosure of the earlier rate increase referenced in §1915.B.5.d.

C. An applicant shall sign an acknowledgement at the time of application, unless the method of application does not allow for signature at that time, that the insurer made the disclosure required under §1915.B.1 and 5. If due to the method of application the applicant cannot sign an acknowledgement at the time of application, the applicant shall sign no later than at the time of delivery of the policy or certificate.

D. An insurer shall use the forms in Appendices B and F to comply with the requirements of §1915.B and §1915.C of this Section.

E. An insurer shall provide notice of an upcoming premium rate schedule increase to all policyholders or certificateholders, if applicable, at least 45 days prior to the implementation of the premium rate schedule increase by the insurer. The notice shall include the information required by §1915.B when the rate increase is implemented.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:465 (February 2005).

§1917. Initial Filing Requirements

A. This Section applies to any long-term care policy issued in this state on or after August 19, 2005.

B. An insurer shall provide the information listed in §1917.B to the commissioner 45 days prior to making a long-term care insurance form available for sale:

1. a copy of the disclosure documents required in §1915; and

2. an actuarial certification consisting of at least the following:

a. a statement that the initial premium rate schedule is sufficient to cover anticipated costs under moderately adverse experience and that the premium rate schedule is reasonably expected to be sustainable over the life of the form with no future premium increases anticipated;

b. a statement that the policy design and coverage provided have been reviewed and taken into consideration;

c. a statement that the underwriting and claims adjudication processes have been reviewed and taken into consideration;

d. a complete description of the basis for contract reserves that are anticipated to be held under the form, to include:

i. sufficient detail or sample calculations provided so as to have a complete depiction of the reserve amounts to be held;

ii. a statement that the assumptions used for reserves contain reasonable margins for adverse experience;

iii. a statement that the net valuation premium for renewal years does not increase (except for attained-age rating where permitted); and

iv. a statement that the difference between the gross premium and the net valuation premium for renewal years is sufficient to cover expected renewal expenses; or if such a statement cannot be made, a complete description of the situations where this does not occur:

(a). an aggregate distribution of anticipated issues may be used as long as the underlying gross premiums maintain a reasonably consistent relationship;

(b). if the gross premiums for certain age groups appear to be inconsistent with this requirement, the commissioner may request a demonstration under §1917.C based on a standard age distribution; and

e.i. a statement that the premium rate schedule is not less than the premium rate schedule for existing similar policy forms also available from the insurer except for reasonable differences attributable to benefits; or

ii. a comparison of the premium schedules for similar policy forms that are currently available from the insurer with an explanation of the differences.

C.1. The commissioner may request an actuarial demonstration that benefits are reasonable in relation to premiums. The actuarial demonstration shall include either premium and claim experience on similar policy forms, adjusted for any premium or benefit differences, relevant and credible data from other studies, or both.

2. In the event the commissioner asks for additional information under this provision, the period in §1917.B does not include the period during which the insurer is preparing the requested information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:466 (February 2005).

§1919. Requirements to Offer Inflation Protection

A. - A.3. ...

B. Where the policy is issued to a group, the required offer in §1919.A shall be made to the group policyholder; except, if the policy is issued to a group defined in R.S. 22:1734(4)(d), other than to a continuing care retirement community, the offering shall be made to each proposed certificateholder.

C. ...

D.1. Insurers shall include the following information in or with the outline of coverage:

a. a graphic comparison of the benefit levels of a policy that increases benefits over the policy period with a policy that does not increase benefits. The graphic comparison shall show benefit levels over at least a 20-year period;

b. any expected premium increases or additional premiums to pay for automatic or optional benefit increases.

2. An insurer may use a reasonable hypothetical, or a graphic demonstration, for the purposes of this disclosure.

E. - F. ...

G.1. Inflation protection, as provided in §1919.A.1, shall be included in a long-term care insurance policy unless an insurer obtains a rejection of inflation protection, signed by the policyholder, as required in §1919.G.1. The rejection may be either in the application or on a separate form.

2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), LR 31:467 (February 2005).

§1921. Prohibition against Post-Claim Underwriting (former §1915)

A. All applications for long-term care insurance policies or certificates, except those which are guaranteed issue, shall contain clear and unambiguous questions designed to ascertain the health condition of the applicant.

B.1. If an application for long-term care insurance contains a question which asks whether the applicant has had medication prescribed by a physician, it must also ask the applicant to list the medication that has been prescribed.

2. If the medications listed in such application were known by the insurer, or should have been known at the time

of application, to be directly related to a medical condition for which coverage would otherwise be denied, then the policy or certificate shall not be rescinded for that condition.

C. Except for policies or certificates which are guaranteed issue:

1. the following language shall be set out conspicuously, and in close conjunction with the applicant's signature block, on an application for a long-term care insurance policy or certificate:

CAUTION: If your answers on this application are incorrect or untrue, [company] has the right to deny benefits or rescind your policy;

2. the following language, or language substantially similar to the following, shall be set out conspicuously on the long-term care insurance policy or certificate at the time of delivery:

CAUTION: The issuance of this long-term care insurance [policy] [certificate] is based upon your responses to the questions on your application. A copy of your [application] [enrollment form] [is enclosed] [was retained by you when you applied]. If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: [insert address];

3. prior to issuance of a long-term care policy or certificate to an applicant age 80 or older, the insurer shall obtain one of the following:

- a. a report of a physical examination;
- b. an assessment of functional capacity;
- c. an attending physician's statement; or
- d. copies of medical records.

D. A copy of the completed application or enrollment form (whichever is applicable) shall be delivered to the insured no later than at the time of delivery of the policy or certificate, unless it was retained by the applicant at the time of application.

E. Every insurer or other entity selling or issuing long-term care insurance benefits shall maintain a record of all policy or certificate rescissions, both state and countrywide, except those which the insured voluntarily effectuated, and shall annually furnish this information to the insurance commissioner in the format prescribed by the National Association of Insurance Commissioners in §1961, Appendix A.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), LR 31:467 (February 2005).

§1923. Minimum Standards for Home Health and Community Care Benefits in Long-Term Care Insurance Policies (former §1917)

A. A long-term care insurance policy or certificate shall not, if it provides benefits for home health care or community care services, limit or exclude benefits:

1. by requiring that the insured or claimant would need care in a skilled nursing facility if home health care services were not provided;

2. by requiring that the insured or claimant first, or simultaneously, receive nursing or therapeutic services, or both, in a home, community, or institutional setting before home health care services are covered;

3. by limiting eligible services to services provided by registered nurses or licensed practical nurses;

4. by requiring that a nurse or therapist provide services covered by the policy that can be provided by a home health aide, or other licensed or certified home care worker acting within the scope of his or her licensure or certification;

5. by excluding coverage for personal care services provided by a home health aide;

6. by requiring that the provision of home health care services be at a level of certification or licensure greater than that required by the eligible service;

7. by requiring that the insured or claimant have an acute condition before home health care services are covered;

8. by limiting benefits to services provided by Medicare-certified agencies or providers;

9. by excluding coverage for adult day care services.

B. A long-term care insurance policy or certificate, if it provides for home health or community care services, shall provide total home health or community care coverage that is a dollar amount equivalent to at least one-half of one year's coverage available for nursing home benefits under the policy or certificate, at the time covered home health or community care services are being received. This requirement shall not apply to policies or certificates issued to residents of continuing care retirement communities.

C. Home health care coverage may be applied to the non-home health care benefits provided in the policy or certificate when determining maximum coverage under the terms of the policy or certificate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), repromulgated LR 31:467 (February 2005).

§1925. Requirements for Application Forms and Replacement Coverage (former §1921)

A. Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant has another long-term care insurance policy or certificate in force or whether a long-term care policy or certificate is intended to replace any other accident and sickness or long-term care policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and producer, except where the coverage is sold without a producer, containing such questions may be used. With regard to a replacement policy issued to a group defined by R.S. 22:1734(4)(a), the following questions may be modified only to the extent necessary to elicit information about health or long-term care insurance policies other than the group policy being replaced, provided that the certificateholder has been notified of the replacement.

1. Do you have another long-term care insurance policy or certificate in force (including health care service contract, health maintenance organization contract)?

2. Did you have another long-term care insurance policy or certificate in force during the last 12 months?

a. If so, with which company?

b. If that policy lapsed, when did it lapse?

3. Are you covered by Medicaid?

4. Do you intend to replace any of your medical or health insurance coverage with this policy (certificate)?

B. Producers shall list any other health insurance policies they have sold to the applicant.

1. List policies sold which are still in force.

2. List policies sold in the past five years which are no longer in force.

C. Solicitations Other than Direct Response. Upon determining that a sale will involve replacement, an insurer, other than an insurer using direct response solicitation methods, or its producer, shall furnish the applicant, prior to issuance or delivery of the individual long-term care insurance policy, a notice regarding replacement of accident and sickness or long-term care coverage. One copy of such notice shall be retained by the applicant, and an additional copy signed by the applicant shall be retained by the insurer. The required notice shall be provided in the following manner:

NOTICE TO APPLICANT
REGARDING REPLACEMENT OF INDIVIDUAL ACCIDENT AND SICKNESS OR
LONG-TERM CARE INSURANCE
[Insurance company's name and address]
SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing accident and sickness or long-term care insurance and replace it with an individual long-term care insurance policy to be issued by [company name] Insurance Company. Your new policy provides thirty (30) days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy. You should review this new coverage carefully, comparing it with all accident and sickness or long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care coverage is a wise decision.

STATEMENT TO APPLICANT BY PRODUCER
[BROKER OR OTHER REPRESENTATIVE]:
(Use additional sheets, as necessary.)

I have reviewed your current medical or health insurance coverage. I believe the replacement of insurance involved in this transaction materially improves your position. My conclusion has taken into account the following considerations, which I call to your attention:

1. Health conditions which you may presently have (pre-existing conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.

2. State law provides that your replacement policy or certificate may not contain new pre-existing conditions or probationary periods. The insurer will waive any time periods applicable to pre-existing conditions or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

3. If you are replacing existing long-term care insurance coverage, you may wish to secure the advice of your present insurer or its producer regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

4. If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the

application concerning your medical health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

(Signature of Producer, Broker or Other Representative)
[Typed Name and Address of Producer or Broker]

The above "Notice to Applicant" was delivered to me on:

(Applicant's Signature)

(Date)

D. Direct Response Solicitations. Insurers using direct response solicitation methods shall deliver a notice regarding replacement of accident and sickness or long-term care coverage to the applicant upon issuance of the policy. The required notice shall be provided in the following manner:

NOTICE TO APPLICANT REGARDING REPLACEMENT OF ACCIDENT AND SICKNESS OR LONG-TERM CARE INSURANCE

[Insurance company's name and address]

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing accident and sickness or long-term care insurance and replace it with the long-term care insurance policy delivered herewith issued by [company name] Insurance Company. Your new policy provides thirty (30) days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy. You should review this new coverage carefully, comparing it with all accident and sickness or long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care coverage is a wise decision.

1. Health conditions which you may presently have (pre-existing conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.
2. State law provides that your replacement policy or certificate may not contain new pre-existing conditions or probationary periods. Your insurer will waive any time periods applicable to pre-existing conditions or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.
3. If you are replacing existing long-term care insurance coverage, you may wish to secure the advice of your present insurer or its producer regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.
4. [To be included only if the application is attached to the policy.] If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to [company name and address] within thirty (30) days if any

information is not correct and complete, or if any past medical history has been left out of the application.

(Company Name)

E. Where replacement is intended, the replacing insurer shall notify, in writing, the existing insurer of the proposed replacement. The existing policy shall be identified by the insurer, name of the insured, and policy number or address, including zip code. Such notice shall be made within five working days from the date the application is received by the insurer or the date the policy is issued, whichever is sooner.

F. Life Insurance policies that accelerate benefits for long-term care shall comply with this Section if the policy being replaced is a long-term care insurance policy. If the policy being replaced is a life insurance policy, the insurer shall comply with the replacement requirements of Regulation 70. If a life insurance policy that accelerates benefits for long-term care is replaced by another such policy, the replacing insurer shall comply with both the long-term care and the life insurance replacement requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), LR 31:468 (February 2005).

§1927. Reporting Requirements (former §1923)

A. Every insurer shall maintain records for each producer of that producer's amount of replacement sales as a percentage of the producer's total annual sales and the amount of lapses of long-term care insurance policies sold by the producer as a percentage of the producer's total annual sales.

B. Each insurer shall report annually, by June 30, the 10 percent of its producers with the greatest percentages of lapses and replacements, as measured by §1927.A. (§1961, Appendix G)

C. Reported replacement and lapse rates do not alone constitute a violation of insurance laws or necessarily imply wrongdoing. The reports are for the purpose of reviewing more closely producer activities regarding the sale of long-term care insurance.

D. Every insurer shall report annually, by June 30, the number of lapsed policies as a percentage of its total annual sales and as a percentage of its total number of policies in force as of the end of the preceding calendar year. (§1961, Appendix G)

E. Every insurer shall report annually, by June 30, the number of replacement policies sold as a percentage of its total annual sales and as a percentage of its total number of policies in force as of the preceding calendar year. (§1961, Appendix G)

F. Every insurer shall report annually, by June 30, for qualified long-term care insurance contracts, the number of claims denied for each class of business, expressed as a percentage of claims denied. (§1961, Appendix E)

G. For purposes of §1927:

1. *policy* means only long-term care insurance; and
2. subject to §1927.G.3, *claim* means a request for a payment of benefits under an in force policy regardless of whether the benefit claimed is covered under the policy or any terms or conditions of the policy have been met;

3. *denied* means the insurer refuses to pay a claim for any reason other than for claims not paid for failure to meet the waiting period or because of an applicable preexisting condition; and

4. *report* means on a statewide basis.

H. Reports required under this Section shall be filed with the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), LR 31:469 (February 2005).

§1929. Licensing (former §1925)

A. A producer is not authorized to market, sell, solicit, or negotiate with respect to long-term care except as authorized by R.S. 22:1133 and R.S. 22:1137(A)(1) and (2).

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), LR 31:470 (February 2005).

§1931. Discretionary Powers of Commissioner (former §1927)

A. The commissioner may, upon written request and after an administrative hearing, issue an order to modify or suspend a specific provision or provisions of this regulation with respect to a specific long-term care insurance policy or certificate upon a written finding that:

1. the modification or suspension would be in the best interest of the insureds;

2. the purposes to be achieved could not be effectively or efficiently achieved without the modification or suspension; and

3.a. the modification or suspension is necessary to the development of an innovative and reasonable approach for insuring long-term care; or

b. the policy or certificate is to be issued to residents of a life care or continuing care retirement community or some other residential community for the elderly and the modification or suspension is reasonably related to the special needs or nature of such a community; or

c. the modification or suspension is necessary to permit long-term care insurance to be sold as part of, or in conjunction with, another insurance product.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), LR 31:470 (February 2005).

§1933. Reserve Standards (former §1929)

A. When long-term care benefits are provided through the acceleration of benefits under group or individual life policies or riders to such policies, policy reserves for the benefits shall be determined in accordance with R.S. 22:162, R.S. 22:162.1. and R.S. 22:163. Claim reserves shall also be established in the case when the policy or rider is in claim status.

B. Reserves for policies and riders subject to §1933.B should be based on the multiple decrement model, utilizing all relevant decrements except for voluntary termination

rates. Single decrement approximations are acceptable if the calculation produces essentially similar reserves, if the reserve is clearly more conservative, or if the reserve is immaterial. The calculations may take into account the reduction in life insurance benefits due to the payment of long-term care benefits. However, in no event shall the reserves for the long-term care benefit and the life insurance benefit be less than the reserves for the life insurance benefit, assuming no long-term care benefit.

C.1. In the development and calculation of reserves for policies and riders subject to §1933.C, due regard shall be given to the applicable policy provisions, marketing methods, administrative procedures, and all other considerations which have an impact on projected claim costs including, but not limited to, the following:

- a. definition of insured events;
- b. covered long-term care facilities;
- c. existence of home convalescence care coverage;
- d. definition of facilities;
- e. existence or absence of barriers to eligibility;
- f. premium waiver provision;
- g. renewability;
- h. ability to raise premiums;
- i. marketing method;
- j. underwriting procedures;
- k. claims adjustment procedures;
- l. waiting period;
- m. maximum benefit;
- n. availability of eligible facilities;
- o. margins in claim costs;
- p. optional nature of benefit;
- q. delay in eligibility for benefit;
- r. inflation protection provisions; and
- s. guaranteed insurability option.

2. Any applicable valuation morbidity table shall be certified as appropriate as a statutory valuation table by a member of the American Academy of Actuaries.

D. When long-term care benefits are provided other than as in §1933.A, reserves shall be determined in accordance with prevailing NAIC actuarial standards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), LR 31:470 (February 2005).

§1935. Loss Ratio (former §1931)

A. This Section shall apply to all long-term care insurance policies or certificates except those covered under §1917 and §1937.

B. Benefits under long-term care insurance policies shall be deemed reasonable in relation to premiums, provided the expected loss ratio is at least 60 percent, calculated in a manner which provides for adequate reserving of the long-term care insurance risk. In evaluating the expected loss ratio, due consideration shall be given to all relevant factors, including:

1. statistical credibility of incurred claims experience and earned premiums;
2. the period for which rates are computed to provide coverage;
3. experienced and projected trends;

4. concentration of experience within early policy duration;
5. expected claim fluctuation;
6. experience refunds, adjustments, or dividends;
7. renewability features;
8. all appropriate expense factors;
9. interest;
10. experimental nature of the coverage;
11. policy reserves;
12. mix of business by risk classification; and
13. product features such as long elimination periods, high deductibles, and high maximum limits.

C. Section 1935.B shall not apply to life insurance policies that accelerate benefits for long-term care. A life insurance policy that funds long-term care benefits entirely by accelerating the death benefit is considered to provide reasonable benefits in relation to premiums paid, if the policy complies with all of the following provisions:

1. the interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy;
2. the portion of the policy that provides life insurance benefits meets the nonforfeiture requirements of R.S. 22:168;
3. the policy meets the disclosure requirements of R.S. 22:1736(H), (I) and (J);
4. any policy illustration that meets the applicable requirements of Regulation 55; and
5. an actuarial memorandum is filed with the insurance department that includes:
 - a. a description of the basis on which the long-term care rates were determined;
 - b. a description of the basis for the reserves;
 - c. a summary of the type of policy, benefits, renewability, general marketing method, and limits on ages of issuance;
 - d. a description and a table of each actuarial assumption used. For expenses, an insurer must include percent of premium dollars per policy and dollars per unit of benefits, if any;
 - e. a description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;
 - f. the estimated average annual premium per policy and the average issue age;
 - g. a statement as to whether underwriting is performed at the time of application. The statement shall indicate whether underwriting is used and, if used, the statement shall include a description of the type or types of underwriting used, such as medical underwriting or functional assessment underwriting. Concerning a group policy, the statement shall indicate whether the enrollee or any dependent will be underwritten and when underwriting occurs; and
 - h. a description of the effect of the long-term care policy provision on the required premiums, nonforfeiture values and reserves on the underlying life insurance policy, both for active lives and those in long-term care claim status.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), LR 31:470 (February 2005).

§1937. Premium Rate Schedule Increases

A. This Section shall apply as follows.

1. Except as provided in §1937.A.2, §1937 applies to any long-term care policy or certificate issued in this state on or after August 19, 2005.

2. For certificates issued on or after the effective date of this amended regulation under a group long-term care insurance policy as defined in R.S. 22:1734(4)(a), which policy was in force at the time this amended regulation became effective, the provisions of §1937 shall apply on the policy anniversary following February 19, 2006.

B. An insurer shall provide notice of a pending premium rate schedule increase, including an exceptional increase, to the commissioner at least 45 days prior to the notice to the policyholders and shall include:

1. information required by §1915;
2. certification by a qualified actuary that:
 - a. if the requested premium rate schedule increase is implemented and the underlying assumptions, which reflect moderately adverse conditions, are realized, no further premium rate schedule increases are anticipated;
 - b. the premium rate filing is in compliance with the provisions of §1937;
 3. an actuarial memorandum justifying the rate schedule change request that includes:
 - a. lifetime projections of earned premiums and incurred claims based on the filed premium rate schedule increase; and the method and assumptions used in determining the projected values, including reflection of any assumptions that deviate from those used for pricing other forms currently available for sale;
 - i. annual values for the five years preceding and the three years following the valuation date shall be provided separately;
 - ii. the projections shall include the development of the lifetime loss ratio, unless the rate increase is an exceptional increase;
 - iii. the projections shall demonstrate compliance with §1937.C; and
 - iv. for exceptional increases:
 - (a). the projected experience should be limited to the increases in claims expenses attributable to the approved reasons for the exceptional increase; and
 - (b). in the event the commissioner determines as provided in §1905.A.4 that offsets may exist, the insurer shall use appropriate net projected experience;
 - b. disclosure of how reserves have been incorporated in this rate increase whenever the rate increase will trigger contingent benefit upon lapse;
 - c. disclosure of the analysis performed to determine why a rate adjustment is necessary, which pricing assumptions were not realized and why, and what other actions taken by the company have been relied on by the actuary;
 - d. a statement that policy design, underwriting and claims adjudication practices have been taken into consideration; and
 - e. in the event that it is necessary to maintain consistent premium rates for new certificates and certificates

receiving a rate increase, the insurer will need to file composite rates reflecting projections of new certificates;

4. a statement that renewal premium rate schedules are not greater than new business premium rate schedules except for differences attributable to benefits, unless sufficient justification is provided to the commissioner; and

5. sufficient information for review and approval of the premium rate schedule increase by the commissioner.

C. All premium rate schedule increases shall be determined in accordance with the following requirements:

1. exceptional increases shall provide that 70 percent of the present value of projected additional premiums from the exceptional increase will be returned to policyholders in benefits;

2. premium rate schedule increases shall be calculated such that the sum of the accumulated value of incurred claims, without the inclusion of active life reserves, and the present value of future projected incurred claims, without the inclusion of active life reserves, will not be less than the sum of the following:

a. the accumulated value of the initial earned premium times 58 percent;

b. eighty-five percent of the accumulated value of prior premium rate schedule increases on an earned basis;

c. the present value of future projected initial earned premiums times 58 percent; and

d. eighty-five percent of the present value of future projected premiums not in §1937.C.2.c on an earned basis;

3. in the event that a policy form has both exceptional and other increases, the values in §1937.C.2.b and d will also include 70 percent for exceptional rate increase amounts; and

4. all present and accumulated values used to determine rate increases shall use the maximum valuation interest rate for contract reserves as defined annually under R.S. 22:163. The actuary shall disclose as part of the actuarial memorandum the use of any appropriate averages.

D. For each rate increase that is implemented, the insurer shall file for approval by the commissioner updated projections, as defined in §1937.B.3.a, annually for the next three years and include a comparison of actual results to projected values. The commissioner may extend the period to greater than three years if actual results are not consistent with projected values from prior projections. For group insurance policies that meet the conditions in §1937.K, the projections required by §1937.D shall be provided to the policyholder in lieu of filing with the commissioner.

E. If any premium rate in the revised premium rate schedule is greater than 200 percent of the comparable rate in the initial premium schedule, lifetime projections, as defined in §1937.B.3.a, shall be filed for approval by the commissioner every five years following the end of the required period in §1937.D. For group insurance policies that meet the conditions in §1937.K, the projections required by §1937.E shall be provided to the policyholder in lieu of filing with the commissioner.

F.1. If the commissioner has determined that the actual experience following a rate increase does not adequately match the projected experience and that the current projections under moderately adverse conditions demonstrate that incurred claims will not exceed proportions

of premiums specified in §1937.C, the commissioner may require the insurer to implement any of the following:

a. premium rate schedule adjustments; or

b. other measures to reduce the difference between the projected and actual experience.

2. In determining whether the actual experience adequately matches the projected experience, consideration should be given to §1937.B.3.e, if applicable.

G. If the majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse, the insurer shall file:

1. a plan, subject to commissioner approval, for improved administration or claims processing designed to eliminate the potential for further deterioration of the policy form requiring further premium rate schedule increases, or both, or to demonstrate that appropriate administration and claims processing have been implemented or are in effect; otherwise the commissioner may impose the condition in §1937.H; and

2. the original anticipated lifetime loss ratio, and the premium rate schedule increase that would have been calculated according to §1937.C had the greater of the original anticipated lifetime loss ratio or 58 percent been used in the calculations described in §1937.C.2.a and c.

H.1. For a rate increase filing that meets the following criteria, the commissioner shall review, for all policies included in the filing, the projected lapse rates and past lapse rates during the 12 months following each increase to determine if significant adverse lapsation has occurred or is anticipated:

a. the rate increase is not the first rate increase requested for the specific policy form or forms;

b. the rate increase is not an exceptional increase; and

c. the majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse.

2. In the event significant adverse lapsation has occurred, is anticipated in the filing or is evidenced in the actual results as presented in the updated projections provided by the insurer following the requested rate increase, the commissioner may determine that a rate spiral exists. Following the determination that a rate spiral exists, the commissioner may require the insurer to offer, without underwriting, to all in force insureds subject to the rate increase the option to replace existing coverage with one or more reasonably comparable products being offered by the insurer or its affiliates.

a. The offer shall:

i. be subject to the approval of the commissioner;

ii. be based on actuarially sound principles, but not be based on attained age; and

iii. provide that maximum benefits under any new policy accepted by an insured shall be reduced by comparable benefits already paid under the existing policy.

b. The insurer shall maintain the experience of all the replacement insureds separate from the experience of insureds originally issued the policy forms. In the event of a request for a rate increase on the policy form, the rate increase shall be limited to the lesser of:

i. the maximum rate increase determined based on the combined experience; and

ii. the maximum rate increase determined based only on the experience of the insureds originally issued the form plus 10 percent.

I. If the commissioner determines that the insurer has exhibited a persistent practice of filing inadequate initial premium rates for long-term care insurance, the commissioner may, in addition to the provisions of §1937.H of this Section, prohibit the insurer from either of the following:

1. filing and marketing comparable coverage for a period of up to five years; or

2. offering all other similar coverages and limiting marketing of new applications to the products subject to recent premium rate schedule increases.

J. Section 1937.A through I shall not apply to policies for which the long-term care benefits provided by the policy are *incidental*, as defined in §1905.B, if the policy complies with all of the following provisions:

1. the interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy;

2. the portion of the policy that provides insurance benefits other than long-term care coverage meets the nonforfeiture requirements as applicable in any of the following:

- a. R.S. 22:168;
- b. R.S. 22:173.1, and
- c. R.S. 22:1500;

3. the policy meets the disclosure requirements of R.S. 22:1736(H), (I), and (J);

4. the portion of the policy that provides insurance benefits other than long-term care coverage meets the requirements as applicable in the following:

- a. policy illustrations as required by Regulation 55;
- b. disclosure requirements in Regulation 28;

5. an actuarial memorandum is filed with the insurance department that includes:

a. a description of the basis on which the long-term care rates were determined;

b. a description of the basis for the reserves;

c. a summary of the type of policy, benefits, renewability, general marketing method, and limits on ages of issuance;

d. a description and a table of each actuarial assumption used. For expenses, an insurer must include percent of premium dollars per policy and dollars per unit of benefits, if any;

e. a description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;

f. the estimated average annual premium per policy and the average issue age;

g. a statement as to whether underwriting is performed at the time of application. The statement shall indicate whether underwriting is used and, if used, the statement shall include a description of the type or types of underwriting used, such as medical underwriting or functional assessment underwriting. Concerning a group policy, the statement shall indicate whether the enrollee or

any dependent will be underwritten and when underwriting occurs; and

h. a description of the effect of the long-term care policy provision on the required premiums, nonforfeiture values and reserves on the underlying insurance policy, both for active lives and those in long-term care claim status.

K. Sections 1937.F and 1937.H shall not apply to group insurance policies as defined in R.S. 22:1734(4)(a) where:

1. the policies insure 250 or more persons and the policyholder has 5,000 or more eligible employees of a single employer; or

2. the policyholder, and not the certificateholders, pays a material portion of the premium, which shall not be less than 20 percent of the total premium for the group in the calendar year prior to the year a rate increase is filed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:471 (February 2005).

§1939. Filing Requirement (former §1933)

A. Prior to a long-term care insurer or other similar organization offering group long-term care insurance to a resident of this state, pursuant to R.S. 22:1735, it shall file with the commissioner evidence that the group meets the requirements of R.S. 22:1734(4)(d); and such insurers shall file for approval any group policy or certificate to be offered to residents of this state, regardless of from where it was issued or delivered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), LR 31:473 (February 2005).

§1941. Filing Requirements for Advertising (former §1935)

A. Every insurer, health care service plan, or other entity providing long-term care insurance or benefits in this state shall provide a copy of any long-term care insurance advertisement intended for use in this state, whether through written, radio, or television medium, to the Commissioner of Insurance of this state for review or approval by the commissioner to the extent it may be required under state law. In addition, all advertisements shall be retained by the insurer, health care service plan, or other entity for at least three years from the date the advertisement was first used.

B. The commissioner may exempt from these requirements any advertising form or material when, in the commissioner's opinion, this requirement may not be reasonably applied.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), repromulgated LR 31:473 (February 2005).

§1943. Standards for Marketing (former §1937)

A. Every insurer, health care service plan, or other entity marketing long-term care insurance coverage in this state, directly or through its producers, shall:

1. establish marketing procedures and producer training requirements to assure that:

a. any marketing activities, including any comparison of policies by its producers or other producers will be fair and accurate; and

b. excessive insurance is not sold or issued;

2. display prominently by type, stamp, or other appropriate means, on the first page of the outline of coverage and policy the following:

Notice to buyer: This policy may not cover all of the costs associated with long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations.

3. provide copies of the disclosure forms required in §1915.C (Appendices B and F) to the applicant;

4. inquire, and otherwise make every reasonable effort to identify, whether a prospective applicant or enrollee for long-term care insurance already has accident and sickness, or long-term care insurance and the types and amounts of any such insurance, except that in the case of qualified long-term care insurance contracts, an inquiry into whether a prospective applicant or enrollee for long-term care insurance has accident and sickness insurance is not required;

5. establish auditable procedures for verifying compliance with §1943.A;

6. if the state in which the policy or certificate is to be delivered or issued for delivery has a senior insurance counseling program, approved by the commissioner, the insurer shall, at solicitation, provide written notice to the prospective policyholder and certificateholder that such a program is available and the name, address and telephone number of the program;

7. for long-term care health insurance policies and certificates, use the terms *noncancellable* or *level premium* only when the policy or certificate conforms to §1909.A.3 of this regulation;

8. provide an explanation of contingent benefit upon lapse provided in §1949.D.3.

B. In addition to the practices prohibited in R.S. 22:1211 et seq., the following acts and practices are prohibited.

Cold Lead Advertising Making use directly, or indirectly, of any method of marketing which fails to disclose, in a conspicuous manner, that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance producer or insurance company.

High Pressure Tactics Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

Misrepresentation Misrepresenting a material fact in selling or offering to sell a long-term care insurance policy.

Twisting Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance with another insurer.

C.1. With respect to the obligations set forth in §1943.C.1, the primary responsibility of an association, as defined in R.S. 22:1734(4)(b), when endorsing or selling long-term care insurance shall be to educate its members

concerning long-term care issues, in general, so that its members can make informed decisions. Associations shall provide objective information regarding long-term care insurance policies or certificates endorsed or sold by such associations to ensure that members of such associations receive a balanced and complete explanation of the features in the policies or certificates that are being endorsed or sold.

2. The insurer shall file with the Insurance Department the following material:

a. the policy and certificate;

b. a corresponding outline of coverage; and

c. all advertisements requested by the Insurance Department.

3. The association shall disclose in any long-term care insurance solicitation:

a. the specific nature and amount of the compensation arrangements (including all fees, commissions, administrative fees and other forms of financial support) that the association receives from endorsement or sale of the policy or certificate to its members; and

b. a brief description of the process under which the policies, and the insurer issuing the policies, were selected.

4. If the association and the insurer have interlocking directorates or trustee arrangements, the association shall disclose that fact to its members.

5. The board of directors of associations selling or endorsing long-term care insurance policies or certificates shall review and approve the insurance policies as well as the compensation arrangements made with the insurer.

6.a. The association shall also:

i. at the time of the association's decision to endorse, engage the services of a person with expertise in long-term care insurance, not affiliated with the insurer, to conduct an examination of the policies, including its benefits, features, and rates and update the examination thereafter in the event of material change;

ii. actively monitor the marketing efforts of the insurer and its producers; and

iii. review and approve all marketing materials or other insurance communications used to promote sales or sent to members regarding the policies or certificates.

b. Section 1943.C.6.a.i.-iii shall not apply to qualified long-term care insurance contracts.

7. No group long-term care insurance policy or certificate may be issued to an association unless the insurer files with the state insurance department the information required in §1943.C.

8. The insurer shall not issue a long-term care policy or certificate to an association or continue to market such a policy or certificate unless the insurer certifies annually that the association has complied with the requirements set forth in §1943.C.

9. Failure to comply with the filing and certification requirements of §1943 constitutes an unfair trade practice in violation of R.S. 22:1211 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), LR 31:473 (February 2005).

§1945. Suitability (former §1939)

A. Section 1945 shall not apply to life insurance policies that accelerate benefits for long-term care.

B. Every insurer, health care service plan, or other entity marketing long-term care insurance (the *issuer*) shall:

1. develop and use suitability standards to determine whether the purchase or replacement of long-term care insurance is appropriate for the needs of the applicant;

2. train its producers in the use of its suitability standards; and

3. maintain a copy of its suitability standards and make them available for inspection, upon request, by the commissioner.

C.1. To determine whether the applicant meets the standards developed by the issuer, the producer and issuer shall develop procedures that take the following into consideration:

a. the ability to pay for the proposed coverage and other pertinent financial information related to the purchase of the coverage;

b. the applicant's goals or needs with respect to long-term care and the advantages and disadvantages of insurance to meet these goals or needs; and

c. the values, benefits, and costs of the applicant's existing insurance, if any, when compared to the values, benefits, and costs of the recommended purchase or replacement.

2. The issuer, and where a producer is involved, the producer shall make reasonable efforts to obtain the information set out in §1945.C.1. The efforts shall include presentation to the applicant at, or prior to, application the "Long-Term Care Insurance Personal Worksheet." The personal worksheet used by the issuer shall contain, at a minimum, the information in the format contained in Appendix B, in not less than 12-point type. The issuer may request the applicant to provide additional information to comply with its suitability standards. A copy of the issuer's personal worksheet shall be filed with the commissioner.

3. A completed personal worksheet shall be returned to the issuer prior to the issuer's consideration of the applicant for coverage, except the personal worksheet need not be returned for sales of employer group long-term care insurance to employees and their spouses.

4. The sale or dissemination outside the company or agency by the issuer or producer of information obtained through the personal worksheet in §1961, Appendix B, is prohibited.

D. The issuer shall use the suitability standards it has developed, pursuant to §1945, in determining whether issuing long-term care insurance coverage to an applicant is appropriate.

E. Producers shall use the suitability standards developed by the issuer in marketing long-term care insurance.

F. At the same time as the personal worksheet is provided to the applicant, the disclosure form entitled "Things You Should Know Before You Buy Long-Term Care Insurance" shall be provided. The form shall be in the format contained in §1961, Appendix C, in not less than 12-point type.

G. If the issuer determines that the applicant does not meet its financial suitability standards, or if the applicant has

declined to provide the information, the issuer may reject the application. In the alternative, the issuer shall send the applicant a letter similar to §1961, Appendix D. However, if the applicant has declined to provide financial information, the issuer may use some other method to verify the applicant's intent. Either the applicant's returned letter or a record of the alternative method of verification shall be made part of the applicant's file.

H. The issuer shall report annually to the commissioner the total number of applications received from residents of this state, the number of those who declined to provide information on the personal worksheet, the number of applicants who did not meet the suitability standards, and the number of those who chose to confirm after receiving a suitability letter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), LR 31:475 (February 2005).

§1947. Prohibition against Pre-Existing Conditions and Probationary Periods in Replacement Policies or Certificates (former §1941)

A. If a long-term care insurance policy or certificate replaces another long-term care policy or certificate, the replacing insurer shall waive any time periods applicable to pre-existing conditions and probationary periods in the new long-term care policy for similar benefits, to the extent that similar exclusions have been satisfied under the original policy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), repromulgated LR 31:475 (February 2005).

§1949. Nonforfeiture Benefit Requirement (former §1943)

A. Section 1949 does not apply to life insurance policies or riders containing accelerated long-term care benefits.

B. To comply with the requirement to offer a nonforfeiture benefit pursuant to the provisions of R.S. 22:1738.

1. A policy or certificate offered with nonforfeiture benefits shall have coverage elements, eligibility, benefit triggers and benefit length that are the same as coverage to be issued without nonforfeiture benefits. The nonforfeiture benefit included in the offer shall be the benefit described in §1949.E; and

2. The offer shall be in writing if the nonforfeiture benefit is not otherwise described in the Outline of Coverage or other materials given to the prospective policyholder.

C. If the offer required to be made under R.S. 22:1738 is rejected, the insurer shall provide the contingent benefit upon lapse described in §1949.

D.1. After rejection of the offer required under R.S. 22:1738, for individual and group policies without nonforfeiture benefits issued after the effective date of §1949, the insurer shall provide a contingent benefit upon lapse.

2. In the event a group policyholder elects to make the nonforfeiture benefit an option to the certificateholder, a

certificate shall provide either the nonforfeiture benefit or the contingent benefit upon lapse.

3. The contingent benefit on lapse shall be triggered every time an insurer increases the premium rates to a level which results in a cumulative increase of the annual premium equal to or exceeding the percentage of the insured's initial annual premium set forth below based on the insured's issue age, and the policy or certificate lapses within 120 days of the due date of the premium so increased. Unless otherwise required, policyholders shall be notified at least 45 days prior to the due date of the premium reflecting the rate increase.

Triggers for a Substantial Premium Increase	
Issue Age	Percent Increase over Initial Premium
29 and under	200%
30-34	190%
35-39	170%
40-44	150%
45-49	130%
50-54	110%
55-59	90%
60	70%
61	66%
62	62%
63	58%
64	54%
65	50%
66	48%
67	46%
68	44%
69	42%
70	40%
71	38%
72	36%
73	34%
74	32%
75	30%
76	28%
77	26%
78	24%
79	22%
80	20%
81	19%
82	18%
83	17%
84	16%
85	15%
86	14%
87	13%
88	12%
89	11%
90 and over	10%

4. On or before the effective date of a substantial premium increase as defined in §1949.D.3, the insurer shall:

a. offer to reduce policy benefits provided by the current coverage without the requirement of additional underwriting so that required premium payments are not increased;

b. offer to convert the coverage to a paid-up status with a shortened benefit period in accordance with the terms of §1949.E. This option may be elected at any time during the 120-day period referenced in §1949.D.3; and

c. notify the policyholder or certificateholder that a default or lapse at any time during the 120-day period

referenced in §1949.D.3 shall be deemed to be the election of the offer to convert in §1949.D.4.b above.

E. Benefits continued as nonforfeiture benefits, including contingent benefits upon lapse, are described in §1949.E.

1. For purposes of §1949, *attained age rating* is defined as a schedule of premiums, starting from the issue date, which increases with increasing age at least 1 percent per year prior to age 50, and at least 3 percent per year beyond age 50.

2. For purposes of §1949, the nonforfeiture benefit shall be a shortened benefit period providing paid-up long-term care insurance coverage after lapse. The same benefits (amounts and frequency in effect at the time of lapse but not increased thereafter) will be payable for a qualifying claim, but the lifetime maximum dollars or days of benefits shall be determined as specified in §1949.E.3.

3. The standard nonforfeiture credit will be equal to 100 percent of the sum of all premiums paid, including the premiums paid prior to any changes in benefits. The insurer may offer additional shortened benefit period options, as long as the benefits for each duration equal or exceed the standard nonforfeiture credit for that duration. However, the minimum nonforfeiture credit shall not be less than 30 times the daily nursing home benefit at the time of lapse. In either event, the calculation of the nonforfeiture credit is subject to the limitation of §1949.F.

4.a. The nonforfeiture benefit shall begin not later than the end of the third year following the policy or certificate issue date. The contingent benefit upon lapse shall be effective during the first three years as well as thereafter.

b. Notwithstanding §1949.E.4.a, for a policy or certificate with attained age rating, the nonforfeiture benefit shall begin on the earlier of:

i. the end of the tenth year following the policy or certificate issue date; or

ii. the end of the second year following the date the policy or certificate is no longer subject to attained age rating.

5. Nonforfeiture credits may be used for all care and services qualifying for benefits under the terms of the policy or certificate, up to the limits specified in the policy or certificate.

F. All benefits paid by the insurer while the policy or certificate is in premium paying status and in the paid up status will not exceed the maximum benefits which would have been payable if the policy or certificate had remained in premium paying status.

G. There shall be no difference in the minimum nonforfeiture benefits, as required under §1949, for group and individual policies.

H. The requirements set forth in §1949 shall be effective January 1, 1999 and shall apply as follows:

1. Except as provided in §1949.H.2, the provisions of §1949 apply to any long-term care policy issued in this state on or after the effective date of this amended regulation.

2. For certificates issued on or after the effective date of §1949, under a group long-term care insurance policy, as defined in R.S. 22:1734(4)(a), which policy was in force at the time this amended regulation became effective, the provisions of §1949 shall not apply.

I. Premiums charged for a policy or certificate containing nonforfeiture benefits or a continuing benefit on lapse shall be subject to the loss ratio requirements of §1935 treating the policy as a whole.

J. To determine whether contingent nonforfeiture upon lapse provisions are triggered under §1949.D.3, a replacing insurer that purchased or otherwise assumed a block or blocks of long-term care insurance policies from another insurer shall calculate the percentage increase based on the initial annual premium paid by the insured when the policy was first purchased from the original insurer.

K. A nonforfeiture benefit for qualified long-term care insurance contracts that are level premium contracts shall be offered that meets the following requirements:

1. the nonforfeiture provision shall be appropriately captioned;

2. the nonforfeiture provision shall provide that the amount of the benefit available in the event of a default in the payment of any premiums, and the amount of the benefit may be adjusted subsequent to being initially granted only as necessary to reflect changes in claims, persistency, and interest, as reflected in changes in rates for premium paying contracts approved by the commissioner for the same contract form; and

3. the nonforfeiture provision shall provide at least one of the following:

- a. reduced paid-up insurance;
- b. extended term insurance;
- c. shortened benefit period; or
- d. other similar offerings approved by the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), LR 31:476 (February 2005).

§1951. Standards for Benefit Triggers (former §1945)

A. A long-term care insurance policy shall condition the payment of benefits on a determination of the insured's ability to perform activities of daily living and on cognitive impairment. Eligibility for the payment of benefits shall not be more restrictive than requiring either a deficiency in the ability to perform not more than three of the activities of daily living or the presence of cognitive impairment.

B.1. Activities of daily living shall include at least the following as defined in §1907 and in the policy:

- a. bathing;
- b. continence;
- c. dressing;
- d. eating;
- e. toileting; and
- f. transferring.

2. Insurers may use activities of daily living to trigger covered benefits in addition to those contained in §1951.B.1, as long as they are defined in the policy.

C. An insurer may use additional provisions for the determination of when benefits are payable under a policy or certificate; however the provisions shall not restrict, and are not in lieu of, the requirements contained in §1951.A.-B.

D. For purposes of §1951, the determination of a deficiency shall not be more restrictive than:

1. requiring the hands-on assistance of another person to perform the prescribed activities of daily living; or

2. if the deficiency is due to the presence of a cognitive impairment, supervision or verbal cueing by another person is needed in order to protect the insured or others.

E. Assessments of activities of daily living and cognitive impairment shall be performed by licensed or certified professionals, such as physicians, nurses, or social workers.

F. Long-term care insurance policies shall include a clear description of the process for appealing and resolving benefit determinations.

G. The requirements set forth in §1951 shall be effective January 1, 1999 and shall apply as follows:

1. Except as provided in §1951.G.2, the provisions of §1951 apply to a long-term care policy issued in this state on or after the effective date of the amended regulation.

2. For certificates issued on or after the effective date of §1951, under a group long-term care insurance policy, as defined in R.S. 22:1734(4)(a) that was in force at the time this amended regulation became effective, the provisions of §1951 shall not apply.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), repromulgated LR 31:477 (February 2005).

§1953. Additional Standards for Benefit Triggers for Qualified Long-Term Care Insurance Contracts (former §1947)

A. For purposes of this Section the following definitions apply.

1. Qualified long-term care services means services that meet the requirements of Section 7702B(c)(1) of the Internal Revenue Code of 1986, as amended, as follows: necessary diagnostic, preventive, therapeutic, curative, treatment, mitigation and rehabilitative services, and maintenance or personal care services which are required by a chronically ill individual, and are provided pursuant to a plan of care prescribed by a licensed health care practitioner.

2.a. Chronically ill individual has the meaning prescribed for this term by Section 7702B(c)(2) of the Internal Revenue Code of 1986, as amended. Under this provision, a chronically ill individual means any individual who has been certified by a licensed health care practitioner as:

- i. being unable to perform (without substantial assistance from another individual) at least two activities of daily living for a period of at least 90 days due to a loss of functional capacity; or
- ii. requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment.

b. The term *chronically ill individual* shall not include an individual otherwise meeting these requirements unless within the preceding 12-month period a licensed health care practitioner has certified that the individual meets these requirements.

3. Licensed health care practitioner means a physician, as defined in Section 1861(r)(1) of the Social Security Act, a registered professional nurse, licensed social

worker or other individual who meets requirements prescribed by the Secretary of the Treasury.

4. Maintenance or personal care services means any care the primary purpose of which is the provision of needed assistance with any of the disabilities as a result of which the individual is a chronically ill individual (including the protection from threats to health and safety due to severe cognitive impairment).

B. A qualified long-term care insurance contract shall pay only for qualified long-term care services received by a chronically ill individual provided pursuant to a plan of care prescribed by a licensed health care practitioner.

C. A qualified long-term care insurance contract shall condition the payment of benefits on a determination of the insured's ability to perform activities of daily living for an expected period of at least 90 days due to a loss of functional capacity or to severe cognitive impairment.

D. Certifications regarding activities of daily living and cognitive impairment required pursuant to §1953.C shall be performed by the following licensed or certified professionals: physicians, registered professional nurses, licensed social workers, or other individuals who meet requirements prescribed by the Secretary of the Treasury.

E. Certifications required pursuant to §1953.C may be performed by a licensed health care professional at the direction of the carrier as is reasonably necessary with respect to a specific claim, except that when a licensed health care practitioner has certified that an insured is unable to perform activities of daily living for an expected period of at least 90 days due to a loss of functional capacity and the insured is in claim status, the certification may not be rescinded and additional certifications may not be performed until after the expiration of the 90-day period.

F. Qualified long-term care contracts shall include a clear description of the process for appealing and resolving disputes with respect to benefit determinations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), LR 31:477 (February 2005).

§1955. Standard Format Outline of Coverage (former §1949)

A. Section 1955 of the regulation implements, interprets, and makes specific the provisions of R.S. 22:1736(G) in prescribing a standard format and the content of an outline of coverage.

B. The outline of coverage shall be a free-standing document, using no smaller than 10-point type.

C. The outline of coverage shall contain no material of an advertising nature.

D. Text that is capitalized or underscored in the standard format outline of coverage may be emphasized by other means that provide prominence equivalent to the capitalization or underscoring.

E. Use of the text and sequence of text of the standard format outline of coverage is mandatory, unless otherwise specifically indicated.

F. Format for outline of coverage:

[COMPANY NAME]
[ADDRESS CITY AND STATE]
[TELEPHONE NUMBER]
LONG-TERM CARE INSURANCE
OUTLINE OF COVERAGE
[Policy Number or Group Master
Policy and Certificate Number]

[Except for policies or certificates which are guaranteed issue, the following caution statement, or language substantially similar, must appear as follows in the outline of coverage.]

CAUTION: The issuance of this long-term care insurance [policy] [certificate] is based upon your responses to the questions on your application. A copy of your [application] [enrollment form] [is enclosed] [was retained by you when you applied]. If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: [insert address]

1. This policy is [an individual policy of insurance] ([a group policy] which was issued in the [indicate jurisdiction in which group policy was issued]).

2. **PURPOSE OF OUTLINE OF COVERAGE.** This outline of coverage provides a very brief description of the important features of the policy. You should compare this outline of coverage to outlines of coverage for other policies available to you. This is not an insurance contract, but only a summary of coverage. Only the individual or group policy contains governing contractual provisions. This means that the policy or group policy sets forth in detail the rights and obligations of both you and the insurance company. Therefore, if you purchase this coverage, or any other coverage, it is important that you **READ YOUR POLICY (OR CERTIFICATE) CAREFULLY!**

3. **FEDERAL TAX CONSEQUENCES.**

(a) This [POLICY] [CERTIFICATE] is intended to be a federally tax-qualified long-term care insurance contract under Section 7702B(b) of the Internal Revenue Code of 1986, as amended.

OR

(b) Federal Tax Implications of this [POLICY] [CERTIFICATE]. This [POLICY] [CERTIFICATE] is not intended to be a federally tax-qualified long-term care insurance contract under Section 7702B(b) of the Internal Revenue Code of 1986 as amended. Benefits received under the [POLICY] [CERTIFICATE] may be taxable as income.

4. **TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE CONTINUED IN FORCE OR DISCONTINUED.**

(a) [For long-term care health insurance policies or certificates describe one of the following permissible policy renewability provisions:

(1) Policies and certificates that are guaranteed renewable shall contain the following statement:] **RENEWABILITY: THIS POLICY [CERTIFICATE] IS GUARANTEED RENEWABLE.** This means you have the right, subject to the terms of your policy, [certificate] to continue this policy as long as you pay your premiums on time. [company name] cannot change any of the terms of your policy on its own, except that, in the future, **IT MAY INCREASE THE PREMIUM YOU PAY.**

(2) [Policies and certificates that are noncancellable shall contain the following statement:] **RENEWABILITY: THIS POLICY [CERTIFICATE] IS NONCANCELLABLE.** This means that you have the

right, subject to the terms of your policy, to continue this policy as long as you pay your premiums on time. [company name] cannot change any of the terms of your policy on its own and cannot change the premium you currently pay. However, if your policy contains an inflation protection feature where you choose to increase your benefits, [Company Name] may increase your premium at that time for those additional benefits.

(b) [For group coverage, specifically describe continuation/conversion provisions applicable to the certificate and group policy;]

(c) [Describe waiver of premium provisions or state that there are not such provisions;]

5. TERMS UNDER WHICH THE COMPANY MAY CHANGE PREMIUMS.

[In bold type larger than the maximum type required to be used for the other provisions of the outline of coverage, state whether or not the company has a right to change the premium, and if a right exists, describe clearly and concisely each circumstance under which the premium may change.]

6. TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE RETURNED AND PREMIUM REFUNDED.

(a) [Provide a brief description of the right to return "free look" provision of the policy.]

(b) [Include a statement that the policy either does or does not contain provisions providing for a refund or partial refund of premium upon the death of an insured or surrender of the policy or certificate. If the policy contains such provisions, include a description of them.]

7. THIS IS NOT MEDICARE SUPPLEMENT COVERAGE. If you are eligible for Medicare, review the *Medicare Supplement Buyer's Guide* available from the insurance company.

(a) [For producers] Neither [insert company name] nor its producers represent Medicare, the federal government or any state government.

(b) [For direct response] [insert company name] is not representing Medicare, the federal government or any state government.

8. LONG-TERM CARE COVERAGE. Policies of this category are designed to provide coverage for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital, such as in a nursing home, in the community or in the home. This policy provides coverage in the form of a fixed dollar indemnity benefit for covered long-term care expenses, subject to policy [limitations] [waiting periods] and [coinsurance] requirements. [Modify this paragraph if the policy is not an indemnity policy.]

9. BENEFITS PROVIDED BY THIS POLICY.

(a) [Covered services, related deductible(s), waiting periods, elimination periods and benefit maximums.]

(b) [Institutional benefits, by skill level.]

(c) [Noninstitutional benefits, by skill level.]

(d) Eligibility for Payment of Benefits

[Activities of daily living and cognitive impairment shall be used to measure an insured's need for long-term care and must be defined and described as part of the outline of coverage.]

[Any additional benefit triggers must also be explained. If these triggers differ for different benefits, explanation of the triggers should accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too must be specified.]

10. LIMITATIONS AND EXCLUSIONS.

[Describe:

(a) Pre-existing conditions;

(b) Noneligible facilities and provider;

(c) Noneligible levels of care (e.g., unlicensed providers, care or treatment provided by a family member, etc.);

(d) Exclusions and exceptions;

(e) Limitations.]

[This Section should provide a brief specific description of any policy provisions which limit, exclude, restrict, reduce, delay, or in any other manner operate to qualify payment of the benefits described in number 9 above.]

THIS POLICY MAY NOT COVER ALL THE EXPENSES ASSOCIATED WITH YOUR LONG-TERM CARE NEEDS.

11. RELATIONSHIP OF COST OF CARE AND BENEFITS.

Because the costs of long-term care services will likely increase over time, you should consider whether and how the benefits of this plan may be adjusted. [As applicable, indicate the following:

(a) That the benefit level will not increase over time;

(b) Any automatic benefit adjustment provisions;

(c) Whether the insured will be guaranteed the option to buy additional benefits and the basis upon which benefits will be increased over time if not by a specified amount or percentage;

(d) If there is such a guarantee, include whether additional underwriting or health screening will be required, the frequency and amounts of the upgrade options, and any significant restrictions or limitations;

(e) And finally, describe whether there will be any additional premium charge imposed, and how that is to be calculated.]

12. ALZHEIMER'S DISEASE AND OTHER ORGANIC BRAIN DISORDERS.

[State that the policy provides coverage for insureds clinically diagnosed as having Alzheimer's disease or related degenerative and dementing illnesses. Specifically describe each benefit screen or other policy provision which provides preconditions to the availability of policy benefits for such an insured.]

13. PREMIUM.

(a) State the total annual premium for the policy;

(b) If the premium varies with an applicant's choice among benefit options, indicate the portion of annual premium which corresponds to each benefit option.]

14. ADDITIONAL FEATURES.

(a) Indicate if medical underwriting is used;

(b) Describe other important features.]

15. CONTACT THE STATE SENIOR HEALTH INSURANCE ASSISTANCE PROGRAM IF YOU HAVE GENERAL QUESTIONS REGARDING LONG-TERM CARE INSURANCE. CONTACT THE INSURANCE COMPANY IF YOU HAVE SPECIFIC QUESTIONS REGARDING YOUR LONG-TERM CARE INSURANCE POLICY OR CERTIFICATE.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), LR 31:478 (February 2005).

§1957. Requirement to Deliver Shopper's Guide (former §1951)

A. A long-term care insurance shopper's guide in the format developed by the NAIC, or a guide developed or approved by the commissioner, shall be provided to all prospective applicants of a long-term care insurance policy or certificate.

1. In the case of producer solicitations, a producer must deliver the shopper's guide prior to the presentation of an application or enrollment form.

2. In the case of direct response solicitations, the shopper's guide must be presented in conjunction with any application or enrollment form.

B. Life insurance policies or riders containing accelerated long-term care benefits are not required to furnish the above-referenced guide, but shall furnish the policy summary required under R.S. 22:1736(I).

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), LR 31:480 (February 2005).

§1959. Penalties (former §1953)

A. In addition to any other penalties provided by the law, any insurer and any producer found to have violated any requirement of this state relating to the regulation of long-term care insurance or the marketing of such insurance shall be subject to a fine of up to three times the amount of any commissions paid for each policy involved in the violation or up to \$10,000, whichever is greater.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), LR 31:480 (February 2005).

§1961. Appendices (former §1955)

A. Appendix A

**RESCISSION REPORTING FORM FOR
LONG-TERM CARE POLICIES
FOR THE STATE OF LOUISIANA
FOR THE REPORTING YEAR 20[]**

Company Name: _____

Address: _____

Phone Number: _____

Due: March 1 annually

Instructions:

The purpose of this form is to report all rescissions of long-term care insurance policies or certificates. Those rescissions voluntarily effectuated by an insured are not required to be included in this report. Please furnish one form per rescission.

Policy Form Number	Policy and Certificate Number	Name of Insured	Date of Policy Issuance	Date/s Claim/s Submitted	Date of Rescission

Detailed reason for rescission:

Signature

Name and Title (please type)

Date

B. Appendix B

**LONG-TERM CARE INSURANCE
PERSONAL WORKSHEET**

People buy long-term care insurance for many reasons. Some don't want to use their own assets to pay for long-term care. Some buy insurance to make sure they can choose the type of care they get. Others don't want their family to have to pay for care or don't want to go on Medicaid. But long-term care insurance may be expensive, and may not be right for everyone.

By state law the insurance company must fill out part of the information on this worksheet and ask you to fill out the rest to help you and the company decide if you should buy this policy.

PREMIUM INFORMATION

Policy Form Numbers _____

The premium for the coverage you are considering will be [\$ _____ per month, or \$ _____ per year.] [a one-time single premium of \$ _____.]

Type of Policy (noncancellable/guaranteed renewable): _____

The Company's Right to Increase Premiums: _____

[The company cannot raise your rates on this policy.] [The company has a right to increase premiums on this policy form in the future, provided it raises rates for all policies in the same class in this state.] [Insurers shall use appropriate bracketed statement. Rate guarantees shall not be shown on this form.]

Rate Increase History

The company has sold long-term care insurance since [year] and has sold this policy since [year]. [The company has never raised its rates for any long-term care policy it has sold in this state or any other state.] [The company has not raised its rates for this policy form or similar policy forms in this state or any other state in the last 10 years.] [The company has raised its premium rates on this policy form or similar policy forms in the last 10 years. Following is a summary of the rate increases.]

Questions Related to Your Income

How will you pay each year's premiums?

From my Income From my Savings/Investments My Family will Pay

What is your annual income? (check one)

Under \$10,000 \$[10-20,000] \$[20-30,000]

\$[30-50,000] Over \$50,000

How do you expect your income to change over the next 10 years? (check one)

No change Increase Decrease

If you will be paying premiums with money received only from your own income, a rule of thumb is that you may not be able to afford this policy if the premiums will be more than 7 percent of your income.

Will you buy inflation protection? (check one) Yes No

If not, have you considered how you will pay for the difference between future costs and your daily benefit amount?

From my Income From my Savings/Investments My Family will Pay

The national average annual cost of care in [insert year] was [insert \$ amount], but this figure varies across the country. In ten years the national average annual cost would be about [insert \$ amount] if costs increase 5% annually.

What elimination period are you considering?

Number of days _____ Approximate cost \$ _____ for that period of care.

How are you planning to pay for your care during the elimination period? (check one)

From my Income From my Savings/Investments My Family will Pay

Questions Related to Your Savings and Investments

Not counting your home, about how much are all of your assets (your savings and investments) worth? (check one)

Under \$20,000 \$20,000-\$30,000 \$30,000-\$50,000

Over \$50,000

How do you expect your assets to change over the next ten years? (check one)

Stay about the same Increase Decrease

If you are buying this policy to protect your assets and your assets are less than \$30,000, you may wish to consider other options for financing your long-term care.

Disclosure Statement

<input type="checkbox"/>	The answers to the questions above describe my financial situation.
<input type="checkbox"/>	Or I choose not to complete this information. (Check one.)
<input type="checkbox"/>	I acknowledge that the carrier and/or its producer (below) has reviewed this form with me including the premium, premium rate increase history and potential for premium increases in the future. [For direct mail situations, use the following: I acknowledge that I have reviewed this form including the premium, premium rate increase history and potential for premium increases in the future.] I understand the above disclosures. I understand that the rates for this policy may increase in the future. (This box must be checked).

Signed: _____ (Applicant) _____ (Date)

I explained to the applicant the importance of completing this information.

Signed: _____ (Producer) _____ (Date)

Producer's Printed Name: _____

[In order for us to process your application, please return this signed statement to [name of company], along with your application.]

[My producer has advised me that this policy does not seem to be suitable for me. However, I still want the company to consider my application.]

Signed: _____ (Applicant) _____ (Date)

The company may contact you to verify your answers.

C. Appendix C

THINGS YOU SHOULD KNOW BEFORE YOU BUY LONG-TERM CARE INSURANCE

Long-Term Care Insurance

- A long-term care insurance policy may pay most of the costs for your care in a nursing home. Many policies also pay for care at home or other community settings. Since policies can vary in coverage, you should read this policy and make sure you understand what it covers before you buy it.
- [You should **not** buy this insurance policy unless you can afford to pay the premiums every year.] [Remember that the company can increase premiums in the future.]
- The personal worksheet includes questions designed to help you and the company determine whether this policy is suitable for your needs.

Medicare

- Medicare does **not** pay for most long-term care.

Medicaid

- Medicaid will generally pay for long-term care if you have very little income and few assets. You probably should **not** buy this policy if you are now eligible for Medicaid.
- Many people become eligible for Medicaid after they have used up their own financial resources by paying for long-term care services.
- When Medicaid pays your spouse's nursing home bills, you are allowed to keep your house and furniture, a living allowance, and some of your joint assets.
- Your choice of long-term care services may be limited if you are receiving Medicaid. To learn more about Medicaid, contact your local or state Medicaid agency.

Shopper's Guide

- Make sure the insurance company or producer gives you a copy of a book called the National Association of Insurance Commissioners' "Shopper's Guide to Long-Term Care Insurance." Read it carefully. If you have decided to apply for long-term care insurance, you have the right to return the policy within 30 days and get back any premium you have paid if you are dissatisfied for any reason or choose not to purchase the policy.

Counseling

- Free counseling and additional information about long-term care insurance are available through your state's insurance counseling program. Contact your state insurance department or department on aging for more information about the senior health insurance counseling program in your state.

D. Appendix D

LONG-TERM CARE INSURANCE SUITABILITY LETTER

Dear [Applicant]:

Your recent application for long-term care insurance included a "personal worksheet," which asked questions about your finances and your reasons for buying long-term care insurance. For your protection, state law requires us to consider this information when we review your application, to avoid selling a policy to those who may not need coverage.

[Your answers indicate that long-term care insurance may not meet your financial needs. We suggest that you review the information provided along with your application, including the booklet "Shopper's Guide to Long-Term Care Insurance" and the page titled "Things You Should Know Before Buying Long-Term Care Insurance." Your state insurance department also

Example:

- You bought the policy at age 65 and paid the \$1,000 annual premium for 10 years, so you have paid a total of \$10,000 in premium.
- In the eleventh year, you receive a rate increase of 50%, or \$500 for a new annual premium of \$1,500, and you decide to lapse the policy (not pay any more premiums).
- Your "paid-up" policy benefits are \$10,000 (provided you have a least \$10,000 of benefits remaining under your policy.)

Turn the Page

Contingent Nonforfeiture Cumulative Premium Increase over Initial Premium That qualifies for Contingent Nonforfeiture	
(Percentage increase is cumulative from date of original issue. It does NOT represent a one-time increase.)	
Issue Age	Percent Increase Over Initial Premium
29 and under	200%
30-34	190%
35-39	170%
40-44	150%
45-49	130%
50-54	110%
55-59	90%
60	70%
61	66%
62	62%
63	58%
64	54%
65	50%
66	48%
67	46%
68	44%
69	42%
70	40%
71	38%
72	36%
73	34%
74	32%
75	30%
76	28%
77	26%
78	24%
79	22%
80	20%
81	19%
82	18%
83	17%
84	16%
85	15%
86	14%
87	13%
88	12%
89	11%
90 and over	10%

G. Appendix G

**LONG-TERM CARE INSURANCE
REPLACEMENT AND LAPSE REPORTING FORM**

For the State of _____ For the Reporting Year of _____
 Company Name: _____ Due: June 30 annually
 Company Address: _____ Company NAIC Number: _____
 Contact Person: _____ Phone Number: (____) _____

Instructions

The purpose of this form is to report on a statewide basis information regarding long-term care insurance policy replacements and lapses.

Specifically, every insurer shall maintain records for each producer on that producer's amount of long-term care insurance replacement sales as a percent of the producer's total annual sales and the amount of lapses of long-term care insurance policies sold by the producer as a percent of the producer's total annual sales. The tables below should be used to report the ten percent (10%) of the insurer's producers with the greatest percentages of replacements and lapses.

Listing of the 10% of Producers with the Greatest Percentage of Replacements

Producer's Name	Number of Policies Sold By This Producer	Number of Policies Replaced By This Producer	Number of Replacements As % of Number Sold By This Producer

Listing of the 10% of Producers with the Greatest Percentage of Lapses

Producer's Name	Number of Policies Sold By This Producer	Number of Policies Lapsed By This Producer	Number of Lapses As % of Number Sold By This Producer

Company Totals

Percentage of Replacement Policies Sold to Total Annual Sales _____%
 Percentage of Replacement Policies Sold to Policies In Force
 (as of the end of the preceding calendar year) _____%
 Percentage of Lapsed Policies to Total Annual Sales _____%
 Percentage of Lapsed Policies to Policies In Force
 (as of the end of the preceding calendar year) _____%

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:480 (February 2005).

J. Robert Wooley
 Commissioner

0502#009

RULE

**Department of Revenue
 Policy Services Division**

Electronic Funds Transfer
 (LAC 61:I.4910)

Under the authority of R.S. 47:1511 and 47:1519 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, has amended LAC 61:I.4910, which pertains to the requirement to make payments by electronic funds transfer, to revise the definition of "other immediately investible funds" to include credit and debit card payments and electronic checks and to provide that the taxpayer is responsible for payment of any fee charged for making payment by means defined as other immediately investible funds.

Title 61
REVENUE AND TAXATION

**Part I. Taxes Collected and Administered by the
Secretary of Revenue**

Chapter 49. Tax Collection

§4910. Electronic Funds Transfer

A. - A.4. ...

B. Definitions. For the purposes of this Section, the following terms are defined.

* * *

Other Immediately Investible Funds Cash, money orders, credit and debit card payments, bank drafts, certified checks, teller's checks, electronic checks, and cashier's checks. The taxpayer is responsible for payment of any fee charged for making payment by means defined in this Paragraph as other immediately investible funds.

* * *

C. - E.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1519.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Office of the Secretary, LR 19:1032 (August 1993), repromulgated LR 19:1340 (October 1993), amended LR 20:672 (June 1994), LR 23:448 (April 1997), amended by the Department of Revenue, Office of the Secretary, LR 25:2442 (December 1999), amended by the Department of Revenue, Policy Services Division, LR 28:866 (April 2002), LR 29:2854 (December 2003), LR 31:484 (February 2005).

Cynthia Bridges
Secretary

0502#006

RULE

**Department of Social Services
Office of Community Services**

Developmental and Socialization Activities Program for
Foster Children (LAC 67:V.3507)

In accordance with the provision of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Social Services, Office of Community Services, adopted Rule LAC 67:V, Subpart 5, Foster Care, Chapter 35, Payments, Reimbursements, and Expenditures, §3507, Developmental and Socialization Activities Program for Foster Children.

Title 67

SOCIAL SERVICES

Part V. Community Services

Subpart 5. Foster Care

**Chapter 35. Payments, Reimbursables, and
Expenditures**

**§3507. Developmental and Socialization Activities
Program for Foster Children**

A. The Department of Social Services, Office of Community Services will only provide for separate reimbursement or expenditure of the cost of organized developmental and socialization activities and related items for foster children ages 6 through 17 who reside in a foster home setting, certified and non-certified. This reimbursement or expenditure for developmental and socialization activities and related items is separate from the

board rate in order to improve self-esteem and appropriate peer interaction for foster children and to prevent out-of-wedlock pregnancies. The activities shall address specific areas of need such as building self-confidence, physical coordination, or improving peer interactions.

B. Eligibility is limited to foster children ages 6 through 17, who are in a foster home setting, certified or non-certified.

C. The maximum allowable amount for a child is limited to \$300 a calendar year based on the availability of TANF funding. The child must be at least six years old at the beginning of the calendar year for the \$300 maximum allowable to be available.

D. The allowable activities and related items must be purposefully planned by the foster care worker and the child's foster parent to meet a specific need that is addressed in the case plan for the child. It is not planned that every child will have an identified need that can be met only through reimbursement or expenditure under this program. The foster care worker and foster parent shall discuss the child's developmental and socialization activity needs and the available resources to meet the child's needs. Only when there is no other feasible resource to meet the child's developmental and socialization activity needs will TANF funds be utilized.

E. The allowable activities include such activities as summer camps; community organization/church/school sponsored trips; memberships in organizations, such as scouts or community sports teams and similar activities; and self-improvement or skill development classes, such as music, art, dance, gymnastics, and swimming lessons. Musical instruments, supplies and safety devices or equipment, specialized clothing, and other related items required to participate in these activities are allowable for reimbursement or expenditure under this program in addition to the cost of the activity.

AUTHORITY NOTE: Promulgated in accordance with 42 U. S. C. 601 et seq.; R.S. 46:231, R.S. 36:474, R.S. 36:476 and 477, and R.S. 46:51.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 31:484 (February 2005).

Ann Silverberg Williamson
Secretary

0502#067

RULE

**Department of Social Services
Office of Family Support**

TANF Initiatives Adoptions, Amendments and Repeals
(LAC 67:III.Chapters 55 and 56)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Department of Social Services, Office of Family Support, has repealed LAC 67:III, Subpart 15, Chapter 55, §§5501, 5509-5513, 5525, 5527, 5533, 5537, 5539, 5547, 5553, 5557, 5567, 5569, 5577 and Chapter 56, Diversion Assistance Program, in its entirety. The agency also has amended §§5545, 5549, 5563, and 5573 to remove language referencing legal guardians in the criteria for

eligibility; §5541, Court-Appointed Special Advocates, to remove specific language regarding the TANF partner who will be administering the program; and §5561, Child-Parent Enrichment Services Program, to specify the public awareness portion of this quality child care initiative program.

Title 67
SOCIAL SERVICES

Part III. Family Support

**Subpart 15. Temporary Assistance to Needy Families
(TANF) Initiatives**

Chapter 55. TANF Initiatives

**§5501. Starting Points Early Childhood Development
Program**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:2265 (December 2001), amended LR 29:715 (May 2003), repealed LR 31:485 (February 2005).

§5509. Domestic Violence Services

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:351 (February 2002), amended LR 30:501 (March 2004), repealed LR 31:485 (February 2005).

§5511. Micro-Enterprise Development

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session, Act 13, 2002 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:871 (April 2002), amended LR 28:2373 (November 2002), repealed LR 31:485 (February 2005).

§5513. Post-Release Skills Program

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:351 (February 2002), amended LR 29:715 (May 2003), repealed LR 31:485 (February 2005).

§5525. Pre-GED/Skills Option Program

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session; Act 14, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:352 (February 2002), amended LR 30:501 (March 2004), repealed LR 31:485 (February 2005).

**§5527. Program Evaluation, Comprehensive Needs
Assessment, and Training**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:352 (February 2002), repealed LR 31:485 (February 2005).

§5533. Transportation Services

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 36:474 and 46:231; and Act 12, 2001 Reg. Session, Act 13, 2002 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:352 (February 2002), LR 29:190 (February 2003), repealed LR 31:485 (February 2005).

§5537. Education and Training

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:353 (February 2002), repealed LR 31:485 (February 2005).

§5539. Truancy Assessment and Service Centers

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session; Act 14, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:353 (February 2002), amended LR 30:502 (March 2004), repealed LR 31:485 (February 2005).

§5541. Court-Appointed Special Advocates

A. OFS shall enter into Memoranda of Understanding to provide services to needy children identified as abused or neglected who are at risk of being placed in foster care or, are already in foster care. Community advocates provide information gathering and reporting, determination of and advocacy for the children's best interests, and case monitoring to provide for the safe and stable maintenance of the children or return to their own home.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session; Act 1, 2004 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:871 (April 2002), amended LR 31:485 (February 2005).

§5545. Remediation and Tutoring Programs

A. - B. ...

C. Eligibility for services is limited to families which include a minor child living with a custodial parent or an adult caretaker relative. A family in which any member receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Food Stamps, Child Care Assistance Program (CCAP) benefits, Medicaid, Louisiana Children's Health Insurance Program (LaCHIP), Supplemental Security Income (SSI), or Free or Reduced School Lunch is eligible.

D. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:353 (February 2002), amended LR 31:485 (February 2005).

§5547. Housing Services

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session; Act 13, 2002 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:871 (April 2002), amended LR 28:2374 (November 2002), repealed LR 31:486 (February 2005).

§5549. OCS Child Welfare Programs (Effective April 12, 2002)

A. OFS shall enter into a Memorandum of Understanding with the Office of Community Services (OCS), the state child welfare agency, for collaboration in identifying and serving children in needy families who are at risk of abuse or neglect. Subsequent to the authorization of the U.S. Department of Health and Human Services, Administration for Children and Families, regarding TANF Maintenance of Effort funds, the agency will identify eligible services retroactive to January 1, 2002. The methods of collaboration include:

1. ...

2. *Family Service* comprises services to a child or children and their parents or adult caretaker relatives after an allegation of child neglect or abuse has been validated, to assist in preventing the removal of a child from his care giver or, where temporary emergency removal has already occurred in validated abuse and/or neglect cases, to help reunite the family by returning the child. Services are also provided to a family who requests protective services on its own when it is believed that a child in the family would be at risk. Elements of *family services* include problem identification, family assessment, risk assessment, safety planning, case planning, counseling, problem resolution, provision of or arrangements for needed services, and/or concrete aid through the Preventive Assistance Fund.

B. ...

C. Financial eligibility for those services attributable to TANF/Maintenance of Effort funds is limited to needy families which include a minor child living with a custodial parent or an adult caretaker relative. A needy family is a family in which any member receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Food Stamps, Child Care Assistance Program (CCAP) benefits, Medicaid, Louisiana Children's Health Insurance Program (LaCHIP), or Supplemental Security Income (SSI).

D. ...

AUTHORITY NOTE: Promulgated in accordance with 42 USC 601 et seq.; R.S. 46:231 and R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR:2374 (November 2002), amended LR 31:486 (February 2005).

§5553. Substance Abuse Treatment Program for Office of Community Services Clients (Effective July 1, 2002)

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 13, 2002 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2375 (November 2002), repealed LR 31:486 (February 2005).

§5557. Energy Assistance Program for Low-Income Families (Effective July 1, 2002)

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 36:474 and 46:231; and Act 13, 2002 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2375 (November 2002), repealed LR 31:486 (February 2005).

§5561. Child-Parent Enrichment Services and Public Awareness Program (Effective September 30, 2004)

A. The Department of Social Services, Office of Family Support, shall enter into Memoranda of Understanding or contracts to create quality, early childhood education and parenting programs at various sites, such as schools, Head Start Centers, churches, and Class A Day Care Centers to provide children with age-appropriate services during the school year, school holidays, summer months and before-and-after school and to provide parents, legal guardians, or caretaker relatives of children with parenting and adult/family educational services. A Public Awareness Program will develop public education materials for parents, providers, professionals, and interested parties to: promote applications for CCAP; assist providers; encourage eligible families to apply for services offered through OFS; and educate parents and others who have an interest in children and families about criteria of quality child care and the needs of young children.

B. Services offered by providers meet the TANF goals to prevent and reduce the incidence of out-of-wedlock births by providing supervised, safe environments for children thus limiting the opportunities for engaging in risky behaviors, and to encourage the formation and maintenance of two-parent families by providing educational services to parents or other caretakers to increase their own literacy level and effectiveness as a caregiver, and to foster positive interaction with their children.

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 13, 2002 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 29:190 (February 2003), amended LR 31:486 (February 2005).

§5563. Substance Abuse Treatment Program for Needy Families

A. - B. ...

C. Eligibility for services is limited to needy families, that is, a family in which any member receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Food Stamp benefits, Child Care Assistance Program (CCAP) services, Medicaid, Louisiana Children's Health Insurance Program (LaChip) benefits, Supplemental Security Income (SSI), Free or Reduced Lunch, or who has earned income at or below 200 percent of the federal poverty level. A needy family includes a non-custodial parent or caretaker relative who has earned income at or below 200 percent of the federal poverty level.

D. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 13, 2002 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 29:190 (February 2003), amended LR 31:486 (February 2005).

**§5567. Parental Involvement Services Program
(Effective September 30, 2002)**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 13, 2002 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 29:191 (February 2003), repealed LR 31:487 (February 2005).

**§5569. Alternatives to Abortion Services Program
(Effective September 30, 2002)**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 13, 2002 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 29:191 (February 2003), repealed LR 31:487 (February 2005).

§5573. Community Supervision Program

A. - D. ...

E. Financial eligibility for those services attributable to TANF/Maintenance of Effort (MOE) funds is limited to eligible families, which include a minor child living with a custodial parent or an adult caretaker relative. An eligible family is one in which any member receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Food Stamp benefits, Child Care Assistance Program (CCAP) services, Title XIX (Medicaid) Medical Assistance Program benefits, Louisiana Children's Health Insurance Program (LACHIP) benefits, or Supplemental Security Income (SSI).

F. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 29:2511 (November 2003), amended LR 31:487 (February 2005).

§5577. Skills Training for Incarcerated Fathers

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 14, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:502 (March 2004), repealed LR 31:487 (February 2005).

Chapter 56. Diversion Assistance Program (DAP)

§5601. General Authority

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231, and Act 13, 2002 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2566 (December 2002), repealed LR 31:487 (February 2005).

**Subchapter A. Application, Determination of Eligibility,
and Furnishing Assistance**

§5603. Application Date

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231, and Act 13, 2002 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2566 (December 2002), repealed LR 31:487 (February 2005).

§5605. Standard Filing Unit

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231, and Act 13, 2002 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2566 (December 2002), repealed LR 31:487 (February 2005).

§5607. Application Time Limit

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231, and Act 13, 2002 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2566 (December 2002), repealed LR 31:487 (February 2005).

§5609. Certification Period and Payment Amounts

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231, and Act 13, 2002 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2566 (December 2002), repealed LR 31:487 (February 2005).

§5611. Domestic Violence

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231, and Act 13, 2002 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2567 (December 2002), repealed LR 31:487 (February 2005).

Subchapter B. Conditions of Eligibility

§5613. Citizenship

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B., and Act 13, 2002 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2567 (December 2002), repealed LR 31:487 (February 2005).

§5615. Enumeration

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231, and Act 13, 2002 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2567 (December 2002), repealed LR 31:487 (February 2005).

§5617. Living in the Home of a Qualified Relative

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231, and Act 13, 2002 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2567 (December 2002), repealed LR 31:487 (February 2005).

§5619. Income

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231, and Act 13, 2002 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2567 (December 2002), repealed LR 31:487 (February 2005).

§5621. Residency

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231, and Act 13, 2002 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2568 (December 2002), repealed LR 31:487 (February 2005).

§5623. Resources

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231, and Act 13, 2002 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2568 (December 2002), repealed LR 31:488 (February 2005).

§5625. Work Requirements

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231, and Act 13, 2002 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2568 (December 2002), repealed LR 31:488 (February 2005).

§5627. Job Loss Factors

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231, and Act 13, 2002 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2568 (December 2002), repealed LR 31:488 (February 2005).

§5629. Fleeing Felons and Probation/Parole Violators

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231, and Act 13, 2002 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2569 (December 2002), repealed LR 31:488 (February 2005).

§5631. Strikers

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231, and Act 13, 2002 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2569 (December 2002), repealed LR 31:488 (February 2005).

Ann Silverberg-Williamson
Secretary

0502#069

RULE

**Department of Social Services
Office of Family Support**

TANF Initiatives Development and Socialization Activities
Program for Foster Children (LAC 67:III.5579)

In accordance with R.S.49:950 et seq., the Administrative Procedure Act, the Department of Social Services, Office of Family Support, has adopted §5579, Developmental and Socialization Activities Program for Foster Children, as a new TANF Initiative.

The agency will provide funding through a Memorandum of Understanding, to the Office of Community Services for implementation and administration of this TANF Initiative program. Monies may be spent for the child to participate in formalized developmental or socialization activities including summer camps; community organization/church/school sponsored trips; membership in organizations like Scouts or community sports teams and similar activities; self improvement or skill classes in music, art, dance, gymnastics, or other physical development activities, including swimming lessons; and instruments, supplies, and specialized clothing required to participate in these activities. These developmental and socialization activities will improve self-esteem and appropriate peer interaction thereby reducing the likelihood of out-of-wedlock pregnancies.

Title 67

SOCIAL SERVICES

Part III. Family Support

**Subpart 15. Temporary Assistance to Needy Families
(TANF) Initiatives**

Chapter 55. TANF Initiatives

**§5579. Developmental and Socialization Activities
Program for Foster Children**

A. Effective July 7, 2004, OFS shall enter into a Memorandum of Understanding (MOU) with the Office of Community Services (OCS), to provide funds to assist in addressing a foster child's developmental or socialization needs through organized activities. The activities shall address specific areas such as building self-confidence, physical coordination, or improving peer interactions.

B. Eligibility for services is limited to foster children age 6 through 17, who are in a certified or non-certified foster home.

C. These services meet the TANF goal to reduce out-of-wedlock pregnancies by providing appropriate developmental and socialization activities that will improve self-esteem and appropriate peer interaction.

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; HB 1, 2004 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 31:488 (February 2005).

Ann S. Williamson
Secretary

0502#068

Notices of Intent

NOTICE OF INTENT

Department of Economic Development Auctioneers Licensing Board

Licensing of Auction Businesses and Requirement of Bonds
(LAC 46:III.Chapters 1, 11,12,
13, 15, 17, 23, 25, 27, and 29)

Under the authority of the Louisiana Auctioneers Licensing Law, R.S. 37:3103 et seq., and in accordance with the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Louisiana Auctioneers Licensing Board has initiated procedures to amend and add LAC 46:III, Auctioneers Licensing, Chapters 1, 11, 12, 13, 15, 17, 23, 25, 27, and 29.

The amendments define and interpret to a more full and precise extent the licensing of auction businesses, and the requirement of bonds.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part III. Auctioneers

Chapter 1. Description of Organization

§105. Election and Term of Office

A. The chairman and vice-chairman shall hold office as board members so long as they hold their respective positions as elective officers of the board. Each appointed member shall serve at the pleasure of the governor for a term concurrent to the term of office of the governor appointing him except that each member shall serve until his successor has been appointed and begins serving. Each appointment by the governor shall be submitted to the Senate for confirmation. In the event of the death, resignation, or disability of a member of the board, the governor shall fill the vacancy by appointing a qualified person for the remainder of the unexpired term.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3111 and R.S. 37:3112.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Auctioneer Licensing Board, LR 11:335 (April 1985), amended by the Department of Economic Development, Auctioneers Licensing Board, LR 14:782 (November 1988), LR 31:

Chapter 11. License of Auctioneer

§1101. Qualifications for Applicant

A. The board shall base determination of satisfactory minimum qualifications for licensing as follows:

1. ...

2. be a citizen, or a legal resident of the United States;

A.3. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3111 and R.S. 37:3113.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Auctioneer Licensing Board, LR 11:336 (April 1985), amended by the Department of Economic Development, Auctioneers Licensing Board, LR 14:784 (November 1988), LR 31:

§1103. Licensing Procedure

A. - B.3. ...

4. voter's registration or other satisfactory proof of citizenship of this state or of other; in the alternative, a proof of resident alien status;

5. a good and sufficient surety bond executed by the applicant as principal and by a surety company qualified to do business in the state of Louisiana as surety in the amount of \$10,000;

6. cashier's check, money order or cash (no checks will be accepted) in the sum of \$300 for all fees covered in the initial licensing procedure;

7. oath of office as a Louisiana Auctioneer;

8. irrevocable consent (if applicable);

9. current letter of good standing from other state, if applicable;

10. educational background;

11. three references, including their business addresses, who attest to the applicant's reputation and adherence to ethical standards;

12. previous occupational experience as an auctioneer;

13. copies of all current auctioneers licenses, if any;

14. Louisiana sales tax number;

15. tax identification number.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3112 and R.S. 37:3113.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Auctioneer Licensing Board, LR 11:337 (April 1985), amended by the Department of Economic Development, Auctioneers Licensing Board, LR 14:784 (November 1988), LR 31:

§1105. Availability of Applications and Apprentice License

A. Applications and all other pertinent forms are available at the Department of Economic Development, Louisiana Auctioneers Licensing Board, 8017 Jefferson Highway, Suite A-2, Baton Rouge, Louisiana 70809, or will be mailed upon request of the person seeking to be licensed as an auctioneer or as an apprentice auctioneer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3112 and R.S. 37:3113.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Auctioneer Licensing Board, LR 11:337 (April 1985), amended by the Department of Economic Development, Auctioneers Licensing Board, LR 14:784 (November 1988), LR 31:

§1107. Change of Address

A. All licensees shall notify the board in writing of each change of address within 30 days of that change.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3112 and R.S. 37:3113.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Auctioneer Licensing Board, LR 11:337 (April 1985), amended by the Department of Economic Development, Auctioneers Licensing Board, LR 14:784 (November 1988), LR 31:

§1109. Examination Procedure

A. - B. ...

C. The board shall give examinations for licensure at least six times per year.

D. - G. ...

H. Examinations for persons with disabilities will be provided without discrimination based upon current law and upon the individual's disability.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3112 and R.S. 37:3113.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Auctioneer Licensing Board, LR 11:337 (April 1985), amended by the Department of Economic Development, Auctioneers Licensing Board, LR 14:784 (November 1988), LR 31:

§1113. Fees

A. - A.3. ...

4. initial license fee for an auctioneer ~~CS~~\$150;
5. annual renewal license fee for an auctioneer ~~CS~~\$150;
6. - 7. ...
8. delinquent renewal fee ~~CS~~\$75;
9. - 10. ...
11. initial license fee for an auction business ~~CS~~\$300;
12. annual license renewal fee for an auction

business ~~CS~~\$300;

13. replacement fee of lost, destroyed or mutilated identification card ~~CS~~\$5.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3116.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Auctioneer Licensing Board, LR 11:337 (April 1985), amended by the Department of Economic Development, Auctioneers Licensing Board, LR 14:785 (November 1988), LR 31:

§1117. Qualification for Licensing Apprentice Auctioneers

A. - B.2. ...

3. a good and sufficient surety bond executed by the applicant as principal and by a surety company qualified to do business in the state of Louisiana as surety in the amount of \$10,000, which shall be delivered to the board at the time of the initial license application (see §1201);

4. - 6. ...

7. a form signed by the supervising Louisiana resident licensed auctioneer stating that the apprentice will be serving under him for the term of one year;

8. a copy of the rules and regulations signed by both the apprentice and the supervising auctioneer (see Subsection D).

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3118.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Auctioneer Licensing Board, LR 11:338 (April 1985), amended by the Department of Economic Development, Auctioneers Licensing Board, LR 14:786 (November 1988), LR 31:

§1119. Apprentice Auctioneer Licensing

A. - H. ...

1. a completed application for license as an auctioneer;

2. ...

3. posting of a \$10,000 surety bond, made payable to the Louisiana Auctioneers Licensing Board (see §1201);

4. - 5. ...

6. certified check, money order, or cash in the amount of \$300 (this includes the \$150 license fee, the \$75 application fee, and \$75 examination fee);

7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3112.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Auctioneer Licensing Board, LR 11:338 (April 1985), amended by the Department of Economic Development, Auctioneers Licensing Board, LR 14:786 (November 1988), LR 31:

§1121. Causes for Nonissuance, Suspension, Revocation or Restriction; Fine, Reinstatement

A. The board may refuse to issue or may suspend, revoke or impose probationary or other restrictions of any license issued under this statute and rules for any of the following causes:

1. - 10. ...

11. false, deceptive or misleading advertising;

12. failure to notify the board within 30 days, of any administrative action taken by another licensing authority, board or commission;

13. failure to comply with all local, city, parish/county, or state laws.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3121.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Auctioneer Licensing Board, LR 11:338 (April 1985), amended by the Department of Economic Development, Auctioneers Licensing Board, LR 14:786 (November 1988), LR 31:

Chapter 12. Bonds; Funds

§1201. Bonds

A. Each applicant for licensure as a resident auctioneer, apprentice auctioneer, or auction business shall deliver to and deposit with the board at the time of application either the sum of \$10,000 in cash or a surety bond in the amount of \$10,000. Such bond shall:

1. be executed by the applicant as principal and by a surety company qualified to do business in the state as a surety;

2. be in a form approved by the board;

3. be conditioned upon compliance by the applicant with the conditions of any written auctioneer's contract made by such applicant in connection with a sale or auction in which he is a party;

4. be conditioned upon the assurance that the applicant shall not violate any provision of this Chapter or state law in the conduct of the business for which he is licensed;

5. be made payable to the board for the use, benefit, and indemnity of any person who suffers any loss as a result of a violation of this Chapter and for the proper disposition of all funds, taxes and registration fees;

6. be for the period of licensure.

B. The bond shall be maintained throughout the period of licensure. If the bond is canceled for any reason, the license shall be revoked as of the date of cancellation unless a new bond is furnished prior to that date.

C. A new bond or proper continuation certificate shall be delivered to the board at the beginning of each period of licensure. However, the aggregate liability of the surety in any one year shall not exceed the sum of the bond.

D. A licensed resident auctioneer shall not be required to deposit with the board an additional cash amount or an additional surety bond upon application for licensure as an auction business.

E. The board may promulgate rules to require a cash deposit or surety bond not to exceed \$10,000 as a condition of reinstatement of a license revoked, canceled, suspended, or otherwise restricted pursuant to R.S. 37:3121.

F. The board may promulgate rules to require a cash deposit or surety bond not to exceed \$10,000 of a nonresident auctioneer either licensed in or conducting an auction in Louisiana under the reciprocity provisions of R.S. 37:3117 if a bond is required of a Louisiana auctioneer for licensure or the conduct of an auction in the licensing jurisdiction of such nonresident auctioneer.

G. An auction business which is owned by a nonresident auctioneer shall, prior to being licensed by the board, post a surety bond in the amount which shall be the greater or either:

1. \$10,000;
2. the amount of the bond required of an auction business owned by an auctioneer licensed in Louisiana in the licensing jurisdiction of such nonresident auctioneer.

H. Such bond shall name the board as beneficiary.

1. In the case of a cash deposit, the auctioneer or auction business making the cash deposit shall deposit funds in a recognized state depository with the account or certificate pledged to the Louisiana Auctioneer Licensing Board under the same requirements as a surety bond. The funds shall be maintained in this depository for a period of one calendar year past the expiration date of the license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3112.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Auctioneers Licensing Board, LR 31:

§1203. Auctioneer Recovery Fund

A. Funds remaining in the auctioneers recovery fund shall be deposited into the general fund of the Louisiana Auctioneer Licensing Board with the following provisions.

1. A percentage of the funds shall be designated for a specified number of years to cover those incidents, which occurred while the fund was in existence. All civil judicial proceedings must be exhausted prior to filing a claim against the funds.

a. Only those claims, which are filed within one year of the termination of the fund, will be considered to be filed in a timely manner against the fund.

2. A percentage of the funds shall be designated by the board for educational and administrative use, to cover the cost of continuing education for Louisiana residential auctioneers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3112.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Auctioneer Licensing Board, LR 31:

Chapter 13. Cease and Desist; Injunctions

§1301. Cease and Desist; Injunctions

A. - C. ...

D. Those who hold auction licenses who are found in violation of the statutes or regulations shall be responsible for reasonable attorney fees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3122.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Auctioneer Licensing Board, LR 11:338 (April 1985), amended by the Department of Economic Development, Auctioneers Licensing Board, LR 14:787 (November 1988), LR 31:

Chapter 15. Violations and Penalties

§1501. Violations and Penalties

A. - B. ...

C. Any person who fails to comply with any order issued by the board or its designee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3123.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Auctioneer Licensing Board, LR 11:338 (April 1985), amended by the Department of Economic Development, Auctioneers Licensing Board, LR 14:787 (November 1988), LR 31:

Chapter 17. Responsibilities of Licensed Auctioneers

§1703. Conduct in Professional Manner

A. A licensee shall conduct his professional activities in a professional manner that will reflect credit upon him, the auction profession and auctioneers.

B. - B.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3112.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Auctioneer Licensing Board, LR 11:338 (April 1985), amended by the Department of Economic Development, Auctioneers Licensing Board, LR 14:787 (November 1988), LR 31:

§1705. Record Keeping

A. All licensees, including all individual auctioneers and auction businesses, must retain the following records of each sale conducted by that licensee or conducted by an apprentice auctioneer for which that licensee is responsible, for at least three years after the sale:

1. clerk sheets;
2. consignor sheets;
3. records showing deposits and disbursements from the escrow account;
4. consignor contracts;
5. settlement sheets;
6. receipts to buyers;
7. any document showing lot numbers, item numbers, amounts of sale and commission amounts for each sale;
8. sales tax licenses;
9. occupational licenses;
10. any other license which the auctioneer is required to have to operate his business.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3112.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Auctioneer Licensing Board, LR 31:

Chapter 23. Transfer of Boards, Commissions, Departments and Agencies to the Department of Commerce

§2301. Transferred as Provided in R.S. 36:803

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3120.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Auctioneer Licensing Board, LR 11:339 (April 1985), repealed by the Department of Economic Development, Auctioneer Licensing Board, LR 31:

Chapter 25. Auctioneer Business

§2501. Licensing of Auctioneer Business

A. - D. ...

E. Application Information. Each applicant shall submit the following information on the designated application form:

1. the name of each owner of the entity and the length of time each such person has been an owner;
2. each business address of the entity;
3. each auctioneer licensed by the date of application who has been employed by the business for more than one auction in the previous calendar year;
4. the nature of the business and the product to be sold;
5. two references who shall be auctioneers currently licensed in this state in good standing with the board;
6. tax identification number;
7. Louisiana sales tax number;
8. all related business entities or individuals, such as co-owners, holding companies, sister companies, etc.;
9. a good and sufficient surety bond executed by the applicant as principal and by a surety company qualified to do business in the state of Louisiana as surety in the amount of \$10,000.

F. If, in the opinion of the board, the applicant provided inadequate information to allow the board to ascertain whether the applicant satisfies the qualifications for licensing, the applicant shall be required to provide additional information for purposes of the application or may be required to present himself for an interview for this purpose.

G. - N. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3119.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Auctioneers Licensing Board, LR 20:1367 (December 1994), amended LR 31:

Chapter 27. Continuing Education

§2701. Continuing Education

A. In an effort to improve the quality of the service provided by auctioneers in the state of Louisiana, the board has determined that continuing education shall be required of all auctioneers. As provided for in R.S. 37:3115.1, each auctioneer licensed in the state of Louisiana shall be required to have obtained six hours of continuing education, related to the business of auctioneering, in order to be eligible for renewal, and shall obtain six hours each year thereafter to maintain eligibility for renewal. Under the regulation, each credit hour shall consist of no less than 50 minutes of lecture or instruction time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3112.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Auctioneer Licensing Board, LR 31:

§2703. Providers

A. In order to be considered a provider of continuing education, the provider must satisfy one of the following criteria:

1. be a recognized school of auctioneering approved by the board;
2. be a state regulatory board or commission;

3. be a recognized national or state association;
4. be a certified instructor in a field related to auctioneering;
5. be a recognized expert in a field related to auctioneering either through accreditation or years of experience;

6. be a licensed professional in their field.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3112.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Auctioneer Licensing Board, LR 27:

§2705. Application Process and Provider

Responsibilities

A. Effective (the date these rules become effective), the provider of any continuing education program shall apply to the board for approval of such program by supplying the board with the following information:

1. the name, address, and phone number of the provider seeking approval;
2. a listing of courses offered that pertain to the business of auctioneering;
3. an outline and brief description of each course to be approved including the number of credits for each course;
4. a list of instructors and their credentials;
5. the location and dates, if available, for courses to be approved.

B. Each approved provider shall submit, within 30 days of course completion, a list of all licensees completing the course. This list shall contain the following information:

1. the full name of the licensee;
2. the Louisiana auctioneer's license number;
3. the name of the course taken;
4. the provider course number;
5. the location of the course;
6. the number of credit hours;
7. the date the course was taken;
8. the name of the instructor for that course.

C. The provider shall be required to assure complete attendance of courses prior to issuing credit, through a system of signed attendance sheets showing each licensee's name and license number and the times of each attendee's presence at the course. No course credit shall be given to any attendee who fails to attend the full session. Certificates of attendance, if utilized, shall be issued at the end of the course.

D. Each credit hour shall consist of 50 minutes of instruction or lecture time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3112.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Auctioneer Licensing Board, LR 31:

§2707. Revocation of Provider Status

A. The board shall have the authority to suspend or revoke approval of any provider who fails to adhere to the rules set forth in this Chapter, or who knowingly falsifies or aids anyone in falsifying records pertaining to course credits received.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3112.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Auctioneer Licensing Board, LR 31:

§2709. Auctioneer Responsibilities

A. It shall be the responsibility of the auctioneer to obtain six credit hours of continuing education each year, prior to the license renewal date, in order to maintain eligibility to renew a license. Each licensee shall be required to do the following:

1. attend and complete board approved continuing education seminars, totaling six hours, in courses approved by this board;
2. complete the required six hours of coursework prior to the renewal period of the upcoming year;
3. supply the provider of continuing education, their full name and Louisiana license number, on the providers form in order to receive credit for the course.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3112.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Auctioneer Licensing Board, LR 27:

§2711. Continuing Education for Auction Businesses

A. An owner, officer, director or office manager of each business licensed in the state of Louisiana as an auction business, bearing an AB prefix on the license number, shall be required to take six credit hours of continuing education courses related to the business of auctioneering in order for the business license to be renewed each year.

B. Louisiana resident individual auctioneers exempt from the requirements of holding a separate auction business license are required to take only the continuing education required of individual auctioneers, as stated herein.

C. Any individual licensed auctioneer who is also an owner, officer, director or office manager of a licensed auction business may credit any continuing education taken toward this requirement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3112.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Auctioneer Licensing Board, LR 27:

Chapter 29. Miscellaneous

§2901. Costs for Letters of Good Standing and Rosters of Licensees

A. The board may charge any individual, board or other party requesting a letter of good standing for an individual auctioneer or an Auction Business the sum of \$25 as cost for research , preparation , postage and copies necessary for the preparation of that letter.

B. The board may charge any individual, board or other party the sum of \$25 for the preparation and mailing of a roster of licensees or for preparation of electronic media or labels containing that information.

C. The board may charge any individual, board or other party the sum of \$10 plus the cost of labels to prepare mailing labels. Any such request must be approved by the board chairman before preparing.

D. Should any reciprocal auctioneer licensing board request any of the above, or any other document, that board shall be charged what it charges the Louisiana Auctioneers Licensing Board for the same document.

E. Any auctioneer or auction business licensed under any reciprocity agreement with a reciprocal state will be charged for any of the items listed in this Section the same amount as that charged to Louisiana individual and/or business licensees by the reciprocal state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3112.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Auctioneer Licensing Board, LR 27:

Interested parties are invited to submit written comments on the proposed regulations through March 21, 2005 at 4:30 p.m., to Sherrie Wilks, Louisiana Auctioneers Licensing Board, 8017 Jefferson Hwy., Suite A-2, Baton Rouge, LA, 70809.

Sherrie Wilks
Executive Assistant

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Licensing of Auction Businesses and Requirement of Bonds

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no implementation costs or savings to local government units as a result of this rule. Costs to state government should be approximately \$10,000 annually to implement the Continuing Education Program. These funds are available from the Auctioneer Recovery Fund that is being eliminated. There are sufficient funds to pay for these seminars for approximately nine years. The board is currently considering steps to allow these monies to fund a longer period of continuing education.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no effect on revenue collections to local government units as a result of this rule. However, there will be an increase in revenue collections to the State. It has been estimated that there will be an increase in collection of approximately \$16,000 annually. This is based on approximately 53 auctioneer licenses either being issued or renewed each year at a rate of \$300 per license. Additional revenue may also be collected in the form of delinquent renewal fees that may be imposed and also fees for replacement identification cards. However, an estimate of the amount of revenue that will be generated from these sources cannot be quantified.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The estimated costs to directly affected persons as a result of this rule is \$300 per year for a new or renewed license fee. There may also be additional costs of \$5 for a replacement identification card and \$75 for delinquent renewal fees if applicable. Continuing education will be provided free of charge to those who take the board's seminars. For those who do not take these seminars, the cost to individuals will be a minimum of \$10.

In addition, there will be a savings to licensees of approximately \$10,000 annually as the option of a cash bond has been eliminated. Those who have pledged a cash bond would have lost the use of the money for the year. The cost of a commercial bond is minimal, so that those who would have pledged cash now will pay less than the \$10,000 amount.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated effect on competition or employment as a result of these rules.

Anna E. Dow
Attorney
0502#071

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 111 **C**The Louisiana School, District, and State Accountability System (LAC 28:LXXXIII:4303 and 4313)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 111 C The Louisiana School, District, and State Accountability System* (LAC 28:LXXXIII). Act 478 of the 1997 Regular Legislative Session called for the development of an accountability system for the purpose of implementing fundamental changes in classroom teaching by helping schools and communities focus on improved student achievement. The state's accountability system is an evolving system with different components.

These changes take advantage of new flexibility in guidance for No Child Left Behind and address situations that were not considered when the accountability policy was initially written.

Title 28 EDUCATION

Part LXXXIII. Bulletin 111 **C**Louisiana School, District, and State Accountability

Chapter 43. District Accountability

§4303. Indicator 1 **C**Summer School

A. The Louisiana Department of Education shall use two statistics when calculating an index score for summer school.

1. Part A **C**The percentage passing summer LEAP 21 tests.

a. The Louisiana Department of Education shall calculate the percentage passing summer LEAP 21 tests by using the number of students who scored unsatisfactory failed high-stakes testing in the previous spring as the denominator. The scores results of first-time students shall be included (i.e., not students who are repeating the grade because of a score of unsatisfactory failure in the previous year). This statistic shall include grades 4 and 8 and shall be weighted by the number of students failing each test high-stakes testing in the previous spring. English language arts (ELA) and mathematics shall be counted separately. The numerator and denominator shall be the sum of counts in grade 4 ELA and mathematics plus grade 8 ELA and mathematics. Students' summer school results shall be attributed to the district in which they took the summer test.

b. Formula for converting Part A to an index: $2.5 * (\text{percent passing} + 5)$. Implications of index for Part A:

i. 35 percent passing of summer tests shall yield an index of 100;

ii. 55 percent passing of summer tests shall yield an index of 150.

2. Part B **C**The change in scale scores on LEAP 21 from spring to summer for scores that are unsatisfactory of students who failed high-stakes testing in the spring.

a. The Louisiana Department of Education shall use the mean change in scale scores on LEAP 21 from the spring to the summer administration, for all scores that were unsatisfactory contributing to the students' failures in the spring administration. The scores of first-time students shall

be included (i.e., not students who are repeating the grade because of a score of unsatisfactory in the previous year). If a student is tested in the spring but not in the summer, the change for that student's score shall be "0." If a student is tested in the summer but not in the spring, the spring score shall be assumed to be the 10th percentile of students tested in the spring. Four averages shall be computed for each district, ELA and mathematics for both 4th and 8th grades. The district score shall be the weighted average of the four results. Students' summer school results shall be attributed to the district in which they took the summer test.

b. Formula for converting Part B to an index: $5 * (\text{average scale score gain})$. Implications of index Part B:

i. a scale score gain of 20 points shall yield an index of 100;

ii. a scale score gain of 30 points shall yield an index of 150.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2755 (December 2003), amended LR 31:

§4313. Corrective Actions

A. - B.2. ...

3. Beginning in 2004, districts that fail to achieve adequate yearly progress will complete a self-assessment only after being identified for district improvement as described below in Subsection C.

C. Districts that receive a DRI Index label of "unresponsive" for a second consecutive year and/or are identified for improvement by the subgroup component shall write district improvement plans based on the prior years' self-assessments and submit those plans to the LDE.

1. A district is identified for improvement when it fails in all grade-clusters, in the same subject, to achieve subgroup AYP for two consecutive years.

a. For 2004 only, districts that failed subgroup AYP in 2003 and who fail all three grade-clusters in the same subject as they failed in 2003, will be identified for district improvement.

C.2. - E. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2757 (December 2003), amended LR 30:1449 (July 2004), LR 31:

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.

Interested persons may submit comments until 4:30 p.m., April 11, 2005, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: **Bulletin 111** Louisiana Handbook, District, and State Accountability System

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no estimated implementation costs (savings) to state governmental units. The proposed changes clarify the district accountability summer school indicator and district accountability corrective actions.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be no estimated costs and/or economic benefits to persons or non-governmental groups directly affected.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

Marlyn J. Langley
Deputy Superintendent
Management and Finance
0502#034

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741 Louisiana Handbook for School
Administrators (LAC 28: CXV. Chapters 1-35)

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 Bulletin 741 Louisiana Handbook for School Administrators. Bulletin 741 will be printed in codified format as Part CXV of the Louisiana Administrative Code. This document replaces any previously advertised versions. Bulletin 741 Louisiana Handbook for School Administrator contains all BESE policies and state laws required for the normal operation of districts and schools that are not included in other bulletins. The purpose of this project was to:

- clarify wording of policies;
- ensure that all Rules approved by BESE are included;
- eliminate contradictory policies;
- update Bulletin 741 with current legislation;
- make the bulletin more user-friendly;

- codify the bulletin as is required by the Administrative Procedure Act.

Title 28

EDUCATION

Part CXV. Bulletin 741 Louisiana Handbook for School Administrators

Chapter 1. Foreword

§101. Purpose

A. Policies passed by the Board of Elementary and Secondary Education (BESE) govern the operation of public elementary, middle, and secondary schools. Bulletin 741 Louisiana Handbook for School Administrators, contains these policies.

B. The contents of this bulletin have been revised and reorganized for more efficient use as a reference document for district and school administrators. The bulletin has been extensively reviewed by members of BESE, the Department of Education (DOE), and a statewide review committee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6; R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§103. Revisions

A. Bulletin 741 Louisiana Handbook for School Administrators will be updated monthly as new rules are adopted by BESE.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6; R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

Chapter 3. Operation and Administration

§301. General Authority

A. The public school system established under the Louisiana Constitution shall operate in accordance with the standards set by BESE. Measurable standards of operation have been established for the approval of schools, stating the responsibility of the local educational governing authority.

B. Educational programs shall be in accordance with the Constitution of the United States, the Constitution of Louisiana, the Louisiana Revised Statutes, applicable state and federal regulations, and policies of BESE.

C. Each local education agency (LEA) shall ensure that all eligible persons, regardless of race, creed, sex or disability, have access to educational programs supported by public funds.

D. Any allowable deviations in the implementation of a policy or standard shall be authorized by BESE.

E. Each LEA shall have a signed statement of assurance that the preschool, elementary, and secondary programs operated by the system are currently in compliance with the applicable state and federal regulations when such statements are required for the purpose of funding.

AUTHORITY NOTE: Promulgated in accordance with La. Const. Art. VIII §1 and §3; R.S. 17:6; R.S. 17:7; R.S. 17:111; R.S. 17: 151; R.S 17:172; R.S. 17:1941, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§303. General Powers of Local Educational Governing Authorities

A. Each city and parish school board shall determine the number and location of schools to be opened, and the number and selection of teachers and other certified

personnel from recommendations made by the local superintendent.

B. Each city and parish school board is authorized to adopt rules and regulations for its own governance that are consistent with law and with the regulations of BESE.

1. Each member of a city and parish school board shall receive a minimum of six hours of training and instruction in the school laws of this state, in the laws governing the school boards, and in educational trends and research.

2. The training shall be provided by an institution of higher education, the DOE, or the local school board central office staff.

C. Each city and parish school board shall apply for, receive and expend all funds destined for the support of the schools according to the provisions of R.S. 17:81.

D. Each city and parish school board shall have full and final authority and responsibility for the assignment, transfer and continuance of all students among and within the public schools within its jurisdiction, and shall prescribe rules and regulations pertaining to those functions.

E. Any city or parish school board member shall have the right to examine any or all records of the school system except employee records relative to evaluations, observations, formal complaints, and grievances.

F. A public trust having a city or parish school board as its beneficiary may be created to be funded by surplus revenues of the beneficiary school board and with the use of income produced by the trust restricted to meeting the capital outlay needs of the school system.

G. Individual school board members shall not use the authority of their office to coerce or compel any personnel decisions or any school employee decisions concerning benefits, work assignment, or membership in any organization.

H. No city or parish school board shall accept any funds or grants for any new curricular or pilot programs unless the board has received the prior approval of BESE.

I. Each city and parish school board shall develop and adopt rules and policies regarding the dismissal and discipline of school employees including but not limited to the following issues:

1. dismissing teachers at any time a reduction in force is instituted by the school board;

2. dismissing school employees who have not attained tenure;

3. the investigation of employees accused of impermissible corporal punishment or moral offenses involving students;

4. the investigation of any employee in any case in which there is a public announcement by the board that the employee may be disciplined, whether or not there is an accompanying reduction in employee pay; and

5. grievance procedures for teachers and school employees.

J. No city or parish school board shall adopt any policy which forbids or discourages any teacher or other school board employee from reporting directly to any appropriate law enforcement authority any apparent criminal activity by any person involving, or appearing to involve, controlled dangerous substances, or any other apparent illegal activity.

1. No parish or city school board shall adopt any policy that would have the effect of preventing or hindering the response of law enforcement officials on school board property, to reports of illegal activity.

K. Each city and parish school board may enter into voluntary compacts with other LEAs for the purpose of providing multiparish education programs of all kinds in accordance with R.S. 17:100.2.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:53; R.S. 17:81; 17:81.2 17:81.4-8; R.S. 17:100.2; R.S. 17:104; R.S. 17:151.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§305. Administration

A. The organization and administration of education in each LEA and school shall be that which best meets the needs of the students, the community, and the society, and shall fulfill the purpose for which the school system and school were organized.

B. Coordination of school instructional programs shall be planned and arranged to ensure effective program operation. All activities shall conform to policies adopted by the local education governing authority, or of the school system, or of other applicable educational governing authorities.

C. Each LEA and school shall develop effective administrative procedures with respect to opening and closing the school year, office management, and daily administration and LEA activities.

D. The superintendent of each LEA shall faithfully carry out the requirements of the state school laws and the rules and regulations made for the schools by BESE.

E. The principal shall be responsible for coordinating and directing all activities of the school.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:81; R.S. 17:91; R.S. 17:105; R.S. 17:414.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§307. Philosophy and Purposes

A. It shall be the responsibility of each LEA and school to formulate a written statement of its philosophy and purposes and/or mission statement. This statement shall give direction to the education program. The philosophy and purposes shall be on a system-wide basis and shall be adapted to meet the needs of each school within the system.

1. Copies of the statement of philosophy and purposes shall be on file at the offices of the superintendent and the principal.

AUTHORITY NOTE: Promulgated in accordance with La. Const. Art. VIII Preamble and R.S. 17:6; R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§309. Learning Environment

A. The learning environment shall be conducive to the educational and overall well being of students.

AUTHORITY NOTE: Promulgated in accordance with Louisiana Constitution Art. VIII Preamble.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§311. System Accreditation

A. Each school system shall participate in a program of system accreditation and receive a classification granted by the DOE based upon a fifth-year, on-site verification of the Annual System and School Reports.

B. All school systems shall receive an accreditation classification.

C. Schools systems shall be classified according to the following categories based upon the fifth-year, on-site visitation:

1. Accredited

a. Accredited. The programs offered by the school system are in compliance with the policies and standards of BESE.

b. Accredited Provisionally. One or more programs offered by the school system has deficiencies in standards other than those stated in the probational category, and the system is being advised and requested to make corrections. Improvement is expected prior to the next school year.

c. Accredited Probationally. One or more programs offered by the school system has major deficiencies in one or more of the following areas:

i. at least one member of the professional staff does not hold a valid Louisiana teaching certificate;

ii. the school system does not offer a curriculum to meet graduation requirements or a balanced elementary curriculum as prescribed in this bulletin;

iii. the school system has a student who is currently enrolled in a special education program and whose last individual evaluation occurred three or more years ago;

iv. the school has an identified exceptional student who does not have a current Individualized Education Program (IEP);

v. the school system does not adhere to and implement the various sections of the Revised Statutes of Louisiana as they affect the health and safety of the students and staff. (These include fire prevention and drills, provisions for a healthful environment, and safety regulations for transportation.);

vi. the physical facilities do not conform to the current federal, state, and local building fire, safety, and health codes; and

vii. if deficiencies are cited, after being accredited provisionally for one year, the system shall be accredited probationally.

2. Unaccredited

a. If deficiencies are cited, after being accredited probationally for one year, the system shall be unaccredited.

B. A school system's accreditation status may be altered (either upgraded or downgraded) based upon either the on-site verification of the implementation of the action plan and/or the on-site verification of the Annual School and System Reports.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.9.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§313. Special Education Compliance Monitoring

A. Each school system shall participate in a system of special education compliance monitoring. The school system shall receive a formal compliance document that describes any corrective actions that must be taken and timelines for correction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§315. School Approval

A. In order to benefit from state and federal funds, each elementary and secondary, career/technical, and special school under the jurisdiction of BESE shall participate in a program of school approval and receive an approved classification category from the DOE based upon information submitted to the DOE by the school.

B. Schools shall be classified according to the following categories:

1. Approved school meets the standards of BESE.

2. Approved Provisionally school has some deficiencies in standards other than those stated in the probational category and is being advised and requested to make corrections; or the school and/or the LEA on behalf of the school:

a. fail to complete the actions required of schools in School Improvement 1 as defined in Bulletin 111 after being identified for School Improvement 1; or

b. fail to respond to the findings of a data audit of School Performance Score indicators conducted by the DOE or a third party contracted by the DOE; or

c. the school is in School Improvement 3.

3. Approved Probationally school has one or more of the following deviations from standards:

a. the principal is not certified;

b. at least one member of the professional staff does not hold a valid Louisiana teaching certificate;

c. the school does not offer a curriculum to meet graduation requirements or a balanced elementary curriculum as prescribed in this bulletin;

d. the school has a student who is currently enrolled in a special education program and whose last individual evaluation occurred three or more years ago;

e. the school has an identified exceptional student who does not have a current IEP;

f. the school does not adhere to and implement the various sections of the Revised Statutes of Louisiana as they affect the health and safety of the students and staff. (These include fire prevention and drills, provisions for a healthful environment, and safety regulations for transportation.);

g. the physical facilities do not conform to the current federal, state, and local building fire, safety, and health codes;

h. the school has been on provisional approval for at least two years; or

i. the school and/or the LEA on behalf of the school:

ii. fail to complete the actions required of schools in School Improvement 2 or 3 as defined in Bulletin 111: Louisiana School, District, and State Accountability after being identified for School Improvement 2 or 3; or

iii. fail to implement the school's/district's proposed plan to correct the findings of a data audit of School Performance Score indicators conducted by the DOE or a third party contracted by the DOE; or

j. the school is in School Improvement 4, 5, or 6.

4. Unapproved any school shall be unapproved if the school has not corrected the stated deficiencies within the time fixed by the DOE; or the school and/or the LEA on behalf of the school:

a. fail to complete the actions required of schools in School Improvement 4, 5, or 6 as defined in Bulletin 111:

Louisiana School, District, and State Accountability after being identified as being in School Improvement 4, 5, or 6; or

b. submit a Reconstitution Plan that BESE does not approve as defined in Bulletin 111.

C. The DOE shall set the guidelines and fix the period of time for corrections.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§317. School and District Accountability

A. Every school shall participate in a school accountability program based on student achievement as approved by BESE. Refer to Bulletin 111: Louisiana School, District, and State Accountability.

B. Every school district shall participate in a district accountability program based on school performance as approved by BESE. Refer to Bulletin 111: Louisiana School, District, and State Accountability.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§319. Classification of Established Schools

A. The local superintendent shall receive from the principal of each school, on or before the date established by the DOE, the completed Annual School Report based upon minimum requirements for school approval.

B. The local superintendent shall submit to the State Superintendent of Education, on or before the date established by the DOE, an Annual School Report for each school in the system showing the extent to which each school is meeting the minimum requirements for classification.

C. A composite report of the findings and ratings of the schools by the DOE shall be presented to the State Superintendent of Education for final action. A final report shall be submitted to BESE.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6; R.S. 17:92.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§321. Review and Evaluation

A. School self-evaluation shall be used to affect improvement in the purposes of the school, and in the understanding of pupils, instructional methods, and educational outcomes.

1. Provisions for evaluating the school, the students, the teachers, the methods and materials, the curricular content, and the organization shall be made.

2. The principal shall have the responsibility of providing the leadership for school self-evaluations.

B. Instructional programs of the school system shall be continually reviewed and analyzed for the purpose of making improvements.

1. Each school shall, with the assistance of the LEA, show evidence of continuous review, study, research, and analysis aimed at school improvement.

2. A file on all self-evaluation procedures and results shall be accessible in the principal's office.

3. Test results and other data on student potential and achievement shall be used in efforts to improve instruction.

C. Follow-up studies shall be conducted by the school for in-school students, out-of-school graduates, and/or school dropouts when mandated by federal directives.

D. The school system shall assist schools in conducting follow-up studies for in-school students, out-of-school graduates, and/or school dropouts when mandated by federal directives.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6; R.S. 17:7; R.S. 17:22.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§323. Louisiana Educational Assessment Program

A. Each LEA shall participate in the Louisiana Educational Assessment Program.

B. Performance standards for LEAP for the 21st Century (LEAP 21) and Graduation Exit Examination for the 21st Century (GEE 21) are equal to the rigor of the National Assessment of Educational Progress (NAEP) performance standards.

C. Achievement Level Labels

Label and Short Description	Policy Definition
Advanced	A student at this level has demonstrated superior performance beyond the mastery level.
Mastery (Exceeding the Standard)	A student at this level has demonstrated competency over challenging subject matter and is well prepared for the next level of schooling.
Basic (Meeting the Standard)	A student at this level has demonstrated only the fundamental knowledge and skills for the next level of schooling.
Approaching Basic (Approaching the Standard)	A student at this level has only partially demonstrated the fundamental knowledge and skills needed for the next level of schooling.
Unsatisfactory	A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling.

D. District-wide test results, but not scores or rankings of individual students, shall be reported to the local educational governing authority at least once a year at a regularly scheduled local educational governing authority meeting.

E. LEAP Alternate Assessment participation criteria shall be used by IEP teams to document that a student meets the criteria to participate in LEAP Alternate Assessment.

F. Schools shall ensure that student participation is documented on the LEAP Alternate Assessment Participation Criteria form as approved by BESE.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§325. Kindergarten and Prekindergarten

A. All LEAs shall provide kindergarten programs for all eligible students of appropriate age. The placement of students shall be clearly communicated to parents by the school.

B. Each LEA shall provide for and offer in every school having a first grade, or in a kindergarten center, a full-day kindergarten program in accordance with standards set in this bulletin.

1. School systems may establish a registration deadline for student entry into the kindergarten program.

This date shall not apply to those students previously enrolled in a kindergarten program.

C. Each LEA shall require that every child entering kindergarten for the first time be given a nationally recognized readiness screening. The results of this screening shall be used in placement and for planning instruction. The pupil progression plan for each LEA shall include criterion for placement.

1. The parent or guardian of each child shall be advised of the nature of the child's level of readiness.

2. Each LEA shall report to the DOE screening results by school on an annual basis by December first of each year.

D. Each LEA may develop and offer prekindergarten instruction.

1. The goal of prekindergarten instruction shall be to improve academic readiness, individual development skills and social skills.

2. Prior to implementing prekindergarten instruction, an LEA shall set forth a statement of the needs the program is intended to address, the anticipated results, the basis upon which the results are expected, an outline of the implementation steps, a detailed plan for staff usage, a detailed budget, and a plan for the evaluation of the program results.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.8; R.S. 17:151.3; R.S. 17:391.11.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§327. Pupil Progression

A. Each LEA shall develop a Pupil Progression Plan consisting of all policies and procedures for the placement of students grades K-12.

NOTE: Refer to Bulletin 1566C Guidelines for Pupil Progression, and the addendum to Bulletin 1566C Regulations for the Implementation of Remedial Education Programs Related to the LEAP/CRT Program, Regular School Year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§329. Remedial Education Programs

A. A program of remedial education shall be put into place by LEAs following regulations adopted by the DOE and approved by BESE. All eligible students shall be provided with appropriate remedial instruction.

B. Each LEA shall describe in writing its proposed remedial education program in its Pupil Progression Plan according to regulations adopted by BESE.

C. Each LEA shall participate in the DOE's remedial education program evaluation.

NOTE: Refer to Bulletin 1566C Guidelines for Pupil Progression, and the addendum to Bulletin 1566C Regulations for the Implementation of Remedial Education Programs Related to the LEAP/CRT Program, Regular School Year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:394 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§331. Special Education Programs

A. Each LEA shall provide special education programs for all exceptional students.

B. The exceptional students shall be maintained in the least restrictive environment appropriate to the students' needs.

C. Each LEA shall ensure that the placement of exceptional students in special education services and settings is determined by the student's IEP placement committee and occurs only with the written consent of the parent(s) or legal guardian for the initial IEP.

NOTE: Refer to Bulletin 1706C Regulations for Implementation of the Exceptional Children's Act.

D. Children who have been receiving special education in another state or in another school system within Louisiana, and children who possess a severe, low-incidence impairment documented by a qualified professional may be initially enrolled in a special education program concurrent with the conduct of the remainder of the evaluation according to the requirements of Bulletin 1508C Pupil Appraisal Handbook.

E. The enrollment shall occur in accordance with §416 and §416 of Bulletin 1706C Regulations for Implementation of the Exceptional Children's Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§333. Instructional Time

A. Each LEA shall adopt a calendar for a minimum school year of 182 days, of which at least 177 days shall be scheduled to provide the required instructional time. Two days shall be for staff development; the remaining days may be used for emergencies and/or other instructional activities. Each LEA may authorize some or all of its schools to modify the total number of instructional minutes per day and instructional days per year, provided that 63,720 minutes of instructional time per year are met.

B. Each LEA may include in its calendar a provision for dismissal of senior students prior to the end of the school year. This provision is not to exceed 10 days of instructional time or the equivalent number of minutes.

C. Each LEA has the option to make the determination regarding the length of the school day for high school seniors.

D. General election day shall be designated by each LEA as a holiday every four years for the presidential election.

E. Each instance of an LEA not meeting the minimum number of 177 days of required instructional time or the equivalent (63,720 minutes per year) shall be examined by the DOE and reported by the DOE or LEA to BESE.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:154.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§335. Program Evaluation for State Board Approval Programs

A. Anyone who accepts and executes responsibility for planning, implementing, and reporting evaluations of educational programs and projects approved by BESE shall have a valid Louisiana program evaluator's certificate.

B. The evaluations of educational programs and projects approved by BESE shall demonstrate the application of the Standards for Educational Evaluations.

NOTE: Refer to Joint Committee on Standards for Educational Evaluation as approved by BESE on January 20, 1981.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6; R.S. 17:7; R.S. 17:391.6; R.S. 17:391.10.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§337. Written Policies and Procedures

A. Each LEA shall have written policies governing all school activities as they relate to students, the instructional program, staff, buildings, services, and the curriculum.

B. Each LEA shall have policies and procedures stated in written form for instructional programs, graduation ceremonies, student activity programs, and student services.

C. Each LEA shall have policies and procedures that address, but are not limited to, the following:

1. the establishment of the number of school days, length of the school day, and other necessary guidelines for the operation of the schools;

2. provision of special educational and related services to exceptional students in accordance with the IEP for no fewer than 177 days or the equivalent during the normal 182-day school cycle;

3. the operation of special departments and special programs in each school;

4. the admittance of students to and the dismissal of students from special educational programs;

5. the exclusion of students with communicable diseases and their readmittance them following their recovery (Refer to §1131.);

6. the control of communicable problems such as lice and scabies (Refer to §1131.);

7. the care of sick or injured students, including notification of parents, in cases of emergencies that occur while students are under the jurisdiction of the school;

8. the administration of medication in schools (Refer to §1129.);

9. The operation of summer schools and extended school year programs for eligible exceptional students (Refer to Chapter 25.);

10. the disciplining of students with disabilities (Refer to §1313.);

11. the use of standard universal precaution by personnel when individuals have direct contact with blood or other body fluids and the provision of sanctions, including discipline if warranted, for failure to use standard universal precautions;

12. the use of school buildings outside of regular school hours;

13. student access to the Internet. (Refer to §1709.);

14. the prohibition against use of tobacco in schools, on school grounds, and on school busses. (Refer to §1143.).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6; R.S. 17:81; R.S.17:240.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§339. Emergency Planning and Procedures

A. Each LEA shall have written policies and procedures that address the immediate response to emergency situations that may develop in the schools.

B. The school shall maintain and use contingency plans for immediate responses to emergency situations.

C. The school shall establish and use procedures for reporting accidents to parents and/or the central office.

D. In the absence of a principal, another individual(s) at the school shall be delegated the necessary authority to use emergency procedures.

E. Procedures for the cancellation of school shall be established; communicated to students, teachers, and parents; and followed when necessary.

F. The school shall establish procedures for special calls to police, fire departments, and hospitals, and practice drills shall be used to ensure the effectiveness of the procedure.

G. The school shall establish procedures for the evacuation of the building in the event of fire, severe weather conditions, or bomb threats. Practice drills shall be used to ensure the effectiveness of the procedure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:416.16.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§341. Homeless Children and Youth

A. Each LEA shall establish a written policy to provide for the placement in school and for the education of any child temporarily residing within the jurisdiction of the board who has no permanent address, who has been abandoned by his parents, or who is in foster care pursuant to placement through the Department of Social Services. However, this does not require the enrollment of any child not permitted by another school system to attend school, either permanently or temporarily, as a result of disciplinary action(s).

B. The term *homeless child and youth* means the following:

1. children and youth who lack a fixed, regular, and adequate nighttime residence, and includes children and youth who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

2. children and youth who have a primary nighttime residence that is a private or public place not designed for or ordinarily used as a regular sleeping accommodation for human beings;

3. children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings;

4. migratory children who qualify as homeless because they are living in circumstances described above.

C. According to a child or youth's best interest, each district must either continue the child/youth's education in the school of origin, or enroll the child in school in any public school that nonhomeless students who live in the attendance area where the child/youth is actually living are eligible to attend.

1. *School of origin* is defined as the school the child or youth attended when permanently housed, or the school in which the child or youth was last enrolled.

2. In determining best interest, the district must, to the extent feasible, keep children/youth in the school of origin unless it is against the wishes of the parent/guardian.

3. A homeless child or youth's right to attend his/her school of origin extends for the duration of homelessness.

4. If a child or youth becomes permanently housed during the academic year, he or she is entitled to stay in the school of origin for the remainder of the academic year.

5. Children and youth who become homeless in between academic years are entitled to attend their school of origin for the following academic year.

6. If the district sends the child/youth to a school other than the school of origin or the school requested by the parent or guardian, the district must provide written explanation to the parent or guardian, including the right to appeal under the enrollment disputes provision.

D. In the case of an unaccompanied youth (i.e., a youth not in the physical custody of a parent or guardian), the district's homeless liaison must assist in placement/enrollment decisions, consider the youth's wishes, and provide notice to the youth of the right to appeal under the enrollment disputes provisions. The choice regarding placement must be made regardless of whether the child or youth resides with the homeless parent or has been temporarily placed elsewhere.

E. The school selected shall immediately enroll the child/youth in school, even if the child or youth lacks records normally required for enrollment, such as previous academic records, medical records, proof of residency or other documentation.

1. The terms *enroll* and *enrollment* are defined to include attending classes and participating fully in school activities. The enrolling school must immediately contact the last school attended to obtain relevant academic and other records.

2. If a child or youth lacks immunizations or immunization or medical records, the enrolling school must refer the parent/guardian to the liaison, who shall help obtain necessary immunizations or immunization or medical records.

3. Districts may require parents or guardians to submit contact information.

F. If a dispute arises over school selection or enrollment, the child/youth must be immediately admitted to the school in which he/she is seeking enrollment, pending resolution of the dispute (five days).

1. The parent or guardian must be provided with a written explanation of the school's decision on the dispute, including the right to appeal.

2. The parent/guardian/youth must be referred to the homeless liaison, who will carry out the state's grievance procedure as expeditiously as possible after receiving notice of the dispute.

3. In the case of an unaccompanied youth, the homeless liaison shall ensure that the youth is immediately enrolled in school pending resolution of the dispute.

G. Each LEA shall keep and have immediately available any records ordinarily kept by the school, including immunization records, academic records, birth certificates, guardianship records, and evaluations for special services or programs, of each homeless child or youth.

H. Each LEA shall provide services comparable to services offered to other students in the school selected, including transportation services, educational services for which the child or youth meets the eligibility criteria (Title I, special education, limited English proficiency), programs in career and technical education, programs for the gifted and talented, and school nutrition programs.

1. School districts are required to adopt policies and practices to ensure that transportation is provided, at the

request of the parent or guardian (or in the case of an unaccompanied youth, the liaison), to and from the school of origin.

2. If the homeless child or youth continues to live in the area served by the LEA in which the school of origin is located, that LEA must provide or arrange for the child's or youth's transportation to or from the school of origin.

3. If the homeless child or youth continues his or her education in the school of origin but begins living in an area served by another LEA, the LEA of origin and the LEA in which the homeless child or youth is living must agree upon a method to apportion the responsibility and costs for providing the child with the transportation to and from the school of origin. If the LEAs cannot agree upon such a method, the responsibility and costs must be shared equally.

I. Each LEA shall designate an appropriate staff person, who may also be a coordinator for other federal programs, to serve as a homeless advocate to coordinate services and ensure that there are no barriers to the enrollment, transportation, attendance, and success in school for homeless children and youth. Additionally, the homeless advocate will promptly solve disputes regarding educational placement.

J. Each LEA shall ensure the prompt resolution (within five school days) of disputes regarding the educational placement of homeless children and youth following the procedures in the Louisiana State Plan for Educating Homeless Children and Youth.

K. Each LEA that receives a homeless direct grant award from the SEA Office of Education for Homeless Children and Youth (EHCY) must coordinate the services provided and designate a homelessness liaison to carry out certain mandates.

L. Each LEA shall review and revise any policies that may act as barriers to the enrollment of homeless children and youth. Further, LEAs must adopt policies and practices to ensure that homeless children and youth are not isolated or stigmatized.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:238; 20 USCS 6311, 6312, 6313, and 6315.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§343. Unsafe Schools

A. Students who are the victims of violent crime shall be afforded the opportunity to transfer to a different school.

1. A student at a public elementary school, middle school or high school who becomes a victim of a crime of violence, as defined by R.S. 14:2, while on school property, on a school bus or at a school-sponsored event, shall be given the option to transfer to a public school within the school district in which the student's current school is located, which offers instruction at the student's grade level and which is not persistently dangerous, if there is such a school within that school district.

2. A student who is enrolled in an alternative school or a special school and who becomes a victim of a crime of violence, as defined by R.S. 14:2, while on school property, on a school bus or at a school-sponsored event, shall be given the option to transfer to another such public school within the school district in which the student's current school is located, which offers instruction at the student's grade-level for which the student meets the admission

requirements, and which is not persistently dangerous, if there is such a school within that school district.

3. A student who has been assigned to a particular school, such as an alternative school or a special school, by court order shall not have the option to transfer.

4. A student who has been the victim of a crime of violence and who must be given the option to transfer should generally be given the option to transfer within 10 calendar days from the date on which the crime of violence occurred.

B. Students attending a school that has been identified as a persistently dangerous school shall be afforded the opportunity to transfer to different school.

1. Students attending an elementary, middle, or high school that has been identified as persistently dangerous shall be given the option to transfer to a public school within the school district in which the student's current school is located, which offers instruction at the students' grade level and which is not persistently dangerous, if there is such a school within that school district.

2. A student who is enrolled in an alternative school or a special school which has been identified as persistently dangerous shall be given the option to transfer to another such public school within the school district in which the student's school is located, which offers instruction at the student's grade-level, for which the student meets the admission requirements and which is not persistently dangerous, if there is such a school within that school district.

3. A student who has been assigned to a particular school, such as an alternative school or a special school, by court order shall not have the option to transfer.

4. The LEA in which the persistently dangerous school is located shall, in a timely manner, notify parents of each student attending the school that the school has been identified as persistently dangerous, offer the students the opportunity to transfer and complete the transfer. Although timely implementation of these steps depends on the specific circumstances within the school district, students should generally be offered the option to transfer within 20 school days from the time the school district is notified that the school has been identified as persistently dangerous. Although the transfer may be temporary or permanent, the transfer must remain in effect for at least as long as the school is identified as persistently dangerous.

5. Schools must meet two of the following criteria for two consecutive school years to be identified as persistently dangerous. For purposes of these criteria, *enrolled student body* means the number of students enrolled in a school as of the October 1 student enrollment count, and *firearm* means a firearm as defined by the federal Gun-Free Schools Act.

a. One percent or more of the enrolled student body is expelled for possession of a firearm on school property, on a school bus, or for actual possession of a firearm at a school-sponsored event.

b. Four percent or more of the enrolled student body has been expelled for a crime of violence as defined by R.S. 14:2 occurring on school property, on a school bus or at a school-sponsored event.

c. Six percent or more of the enrolled student body has been expelled pursuant to R.S. 17:416 for the following types of misconduct in the aggregate occurring on school property, on a school bus or at a school-sponsored event:

- i. immoral or vicious practices;
- ii. conduct or habits injurious to associates;
- iii. possession of or use of any controlled dangerous substance, in any form, governed by the Uniform Controlled Dangerous Substances Law;
- iv. possession of or use of any alcoholic beverage;
- v. cutting, defacing or injuring any part of a school building, any property belonging to the buildings or any school buses owned by, contracted to or jointly owned by any city or parish school board;
- vi. possession of knives or other implements which can be used as weapons, the careless use of which might inflict harm or injury;
- vii. throwing missiles liable to injure others; or
- viii. instigating or participating in fights.

6. An LEA with one or more schools meeting two of these three criteria during one school year shall identify the problem, submit a corrective action plan to the DOE for approval and implement the corrective action. A school system should generally develop a corrective action plan within 20 school days from the time it is notified of the need for the corrective action plan.

7. An LEA with one or more schools identified as persistently dangerous must submit a new corrective action plan to the DOE for approval and must implement the new corrective action. An LEA should generally develop a corrective action plan within 20 calendar days from the date the school district is notified of the need for the corrective action plan.

8. The DOE shall annually reassess persistently dangerous schools. If a school no longer meets the criteria for a persistently dangerous school, taking into account the most recent completed school year and the school year immediately preceding the most recent completed school year, the school will not be deemed persistently dangerous.

C. Nothing herein shall prohibit LEAs from entering into agreements with one another allowing students who become the victims of crimes of violence while on school property, on a school bus, or at a school-sponsored event or who are attending persistently dangerous schools in one school district the option to transfer to a school, which is not persistently dangerous, in another school district. A student who has been assigned to a particular school, such as an alternative school or a special school, by court order shall not have the option to transfer.

AUTHORITY NOTE: Promulgated in accordance with 20 USCS 7912.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§345. Requesting Waivers of BESE Policy

A. The superintendent of the LEA requesting deviation of any standard in this Bulletin shall submit documentation to the DOE, Division of Student Standards and Assessments, justifying the request.

B. Technical assistance for meeting the policy as stated in this Bulletin shall be provided to the LEA by the DOE.

C. When a deviation cannot be corrected by technical assistance, the DOE may consider a waiver of policy using the following guidelines.

1. Waivers for Class Size

a. Waivers granted by the DOE in the following categories will be considered only when the citation would place the school in an approved probational category.

b. The DOE may waive class size requirements up to two students over the maximum allowable upon receipt of the following:

- i. a letter from the local superintendent detailing each class that exceeds the class size;
- ii. documentation from the principal and the superintendent showing how efforts have been made to comply with standards;
- iii. a copy of the school's master schedule, with class sizes included; and
- iv. class sizes above the limit of two will go directly to the appropriate Board committee with an executive recommendation from the DOE.

2. School Counselor/Librarian Ratios Waivers

a. Waivers granted by the DOE in the following categories will be considered only when the citation would place the school in an approved probational category.

b. The DOE may waive the required school counselor and librarian ratios upon receipt of the following:

- i. a letter of justification from the local superintendent;
- ii. a list of all administrative personnel in the school (part-time and full-time); and
- iii. a detailed plan stating how the services will be provided to students.

3. Course Requirement Waivers

a. The DOE may waive up to one Carnegie unit required for graduation in the following circumstances:

- i. waivers for students who transfer to Louisiana from another state during their senior year, are on course to graduate in their previous state of residence, and are unable to schedule and complete the needed course; and
- ii. waivers due to administrative errors.

b. In each situation, the district must provide

- i. a letter of justification from the local superintendent; and
- ii. a copy of the student's transcript.

D. The DOE will report to the appropriate BESE committee bi-annually in June and December on the waivers that have been granted.

E. Requests that do not meet BESE-approved guidelines for an administrative action shall be submitted by the State Superintendent of Education to the appropriate BESE committee with an executive recommendation for action.

F. The agenda of the appropriate BESE committee shall have a standing item for submission of reports from the State Superintendent of Education required in Paragraph E above.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.2(B)(5); R.S. 17:24.10(C)(1)(c); R.S. 17:151(B)(2); R.S. 17:192(B)(2); R.S.17:274(D); R.S. 17:416.2(B).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§347. School Size

A. No school with an average attendance below 10 pupils shall be opened or maintained in any locality, except upon recommendation of the local educational governing authority, giving its reason for such recommendation, and upon approval by BESE.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:152.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

Chapter 5. Personnel

§501. Criminal Background Checks

A. Each public LEA shall request in writing that the Louisiana Bureau of Criminal Identification and Information supply information to ascertain whether an applicant for employment as a teacher, substitute teacher, bus driver, substitute bus driver, janitor, or any other school employee who might reasonably be expected to be placed in a position of supervisory or disciplinary authority over school children, has been convicted of, or pled *nolo contendere* to, any one or more of the crimes enumerated in R.S. 15:5871.1.

1. The request must be on a form prepared by the bureau and signed by a responsible officer or official of the LEA making the request.

2. It must include a statement signed by the person about whom the request is made which gives his or her permission for such information to be released and must include the person's fingerprints in a form acceptable to the bureau.

3. A person who has submitted his or her fingerprints to the bureau may be temporarily hired pending the report from the bureau as to any convictions of, or pleas of *nolo contendere* to, by the person to a crime listed in R.S. 15:5871.

B. No person who has been convicted of or has pled *nolo contendere* to a crime listed in R.S. 15:5871.1 shall be hired by a public elementary or secondary school as a teacher, substitute teacher, bus driver, substitute bus driver, janitor, or as any school employee who might reasonably be expected to be placed in a position of supervisory or disciplinary authority over school children unless approved in writing by a district judge of the parish and the parish district attorney.

1. This statement of approval shall be kept on file at all times by the school and shall be produced upon request to any law enforcement officer.

2. Not later than 30 days after its being placed on file by the school, the school principal shall submit a copy of the statement of approval to the State Superintendent of Education.

C. The LEA shall dismiss any permanent teacher or any other school employee having supervisory or disciplinary authority over school children, if such teacher or other employee is convicted of, or pled *nolo contendere* to, any crime listed in R.S. 15:L587.1(c) except R.S. 14:74.

D. An LEA may reemploy a teacher or other school employee who has been convicted of, or pled *nolo contendere* to, a crime listed in R.S. 15:L587.1(c), except R.S. 14:74, only upon written approval of the district judge of the parish and the district attorney or upon written documentation from the court in which the conviction occurred stating that the conviction has been reversed, set aside, or vacated.

1. Any such statement of approval of the judge and the district attorney and any such written documentation from the court shall be kept on file at all times by the school and shall be produced upon request to any law enforcement officer.

2. Not later than 30 days after its being placed on file by the school, the school principal shall submit a copy of any such statement of approval or written documentation from the court to the state superintendent of education.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:15; R.S. 17:587.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§503. Staff Organization

A. The professional staff of the local LEA's central office shall be organized with assigned roles, responsibilities and authority to provide a structure for implementing local school policies.

B. Each LEA shall be required to employ certified personnel as required by state/federal law:

1. superintendent;
2. special education supervisor;
3. Title IX coordinator;
4. child welfare and attendance supervisor;
5. school nurse;
6. school food services supervisor.

C. The LEA shall assign principals to schools as appropriate.

D. For LEAs in any parish having a population of at least 475,000 persons, a full-time social worker shall be employed in each school which has been identified as a failing school.

E. There shall be alcohol, drug, and substance abuse counselors who regularly visit every secondary school and elementary school at a maximum ratio of four schools to one counselor, for the purpose of counseling students who have been identified as having an alcohol, drug, or substance abuse problem.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:15, R.S. 17:28, R.S. 17:29, R.S. 17:54, R.S. 17:81, R.S. 17:228, R.S. 17:403, R.S. 17:1947(F); Title 34, Sect. 1068; Fed. Reg. 7CFR 210.3(a).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§505. Certification of Personnel

A. To be eligible legally for teaching, administrative, supervisory, or other professional services in the public schools of Louisiana, personnel shall hold a valid Louisiana certificate appropriate to the services rendered or shall receive annual approval in accordance with provisions allowed by BESE.

NOTE: Refer to Bulletin 741 Louisiana Standards for State Certification of School Personnel.

B. In the event that an LEA in Louisiana, through its locally authorized governing board, chooses to select a superintendent who does not hold a valid State-issued teaching certificate, such LEA may appoint the candidate, provided that:

1. the appointment is to a district with a K-12 population in excess of 45,000 students;
2. the district appoints a chief academic officer whose primary and substantial job description shall govern the academics of the district including curriculum and instruction;
3. the chief academic officer possesses a valid state-issued teaching certificate;
4. the chief academic officer also meets all criteria required of a superintendent set forth in existing BESE policy;
5. the chief academic officer is appointed no later than 120 days after the appointment of the superintendent candidate;

C. Effective with the 2006-2007 School Year

1. Teachers in core academic subject areas (English, reading/language arts, mathematics, science, foreign languages, arts, and social studies) must meet the highly qualified requirements in order to teach in any core academic subject.

2. For the non-core academic subject areas, full-time secondary certified teachers in schools including grades 6 through 12 (or any combination thereof) may be allowed to teach a maximum of two periods in one subject out of their field of certification if they have earned 12 hours in that subject. Secondary certified teachers shall not teach below the sixth grade level.

D. Prior to the 2006-2007 school year,

1. Full-time secondary certified teachers in schools including grades 6 through 12 (or any combination thereof) may be allowed to teach a maximum of two periods in one subject out of their field of certification if they have earned 12 hours in that subject. Secondary certified teachers shall not teach below the sixth grade level.

2. Certified elementary teachers may teach Reading I and Reading II at the high school level.

E. Each LEA shall ensure that supervision is provided for school psychologists, school social workers, speech therapists, and any other personnel not certified or licensed to practice their respective discipline without supervision and who are provisionally employed contingent upon such specific documented supervision in accordance with policy in Bulletin 746.

F. Any employee of any LEA whose duty is to transport students in any city or parish activity in a school bus shall meet State Department of Education requirements.

NOTE: Refer to Bulletin 1191 School Transportation Handbook.

G. Each LEA shall establish standards for certification of special education paraprofessionals and shall issue permits based on these standards.

H. School food service managers and food production managers shall be certified through the Division of Nutrition Assistance of the DOE.

I. Teachers certified at the secondary level shall be allowed to teach at the sixth grade level in their respective areas of certification. This provision shall in no way be applied to the policies relative to teachers who teach two hours per day out of their field of certification by virtue of completion of 12 hours in a field.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:7.1; R.S. 17:24.10; R.S. 17:81; R.S. 17:491; 17:497.2; R.S. 17:1974.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§507. Principal/Assistant Principal Induction Program

A. All newly appointed principals and assistant principals with standard or provisional certification shall participate in the Principal/Assistant Principal Induction Program. The program shall include the following.

1. Individuals appointed to a principalship or an assistant principalship after October 1 shall be enrolled in the Principal Induction Program at the beginning of the following year.

2. Principal/Assistant Principal Induction Program requirements shall also apply to individuals serving in the following leadership capacities:

a. Administrative Assistant Fully certified and serving in a full-time, full-year administrative capacity;

b. Acting Principal or Assistant Principal Fully certified and serving in a full-time, full-year administrative capacity.

3. A newly appointed principal who successfully completed the Assistant Principal Induction Program in 1999-2000 shall complete both years of the Principal Internship.

4. A newly appointed principal who successfully completed the Assistant Principal Induction Program in 2000-2001 shall complete only the Year Two requirements of the Principal Induction Program.

5. A newly appointed principal who did not complete the Assistant Principal Induction Program or completed the program in 1998 or before shall complete the two-year requirements of the Principal Induction Program.

B. Upon successful completion of two years of the Induction Program requirements, an individual may request to have the provisional status removed from their certificate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3761.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§509. Personnel Evaluation

A. Each LEA shall adopt a system of personnel evaluation for all certified and other professional personnel.

NOTE: Refer to Bulletin 1525 Personnel Evaluation
Accountability: A Guide for Implementation, Revised 2001.

B. The LEA's personnel evaluation programs shall be monitored periodically by the DOE, when requested by BESE as deemed necessary, to determine whether such programs have been implemented, to what extent they have been implemented, and whether such programs comply with the provision of the law and DOE guidelines.

NOTE: Refer to Bulletin 1525 Personnel Evaluation
Accountability: A Guide for Implementation, Revised 2001.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3881 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§511. Personnel Evaluation Plan Dissemination

A. The LEA shall disseminate copies of the personnel evaluation plan, adopted by the local educational governing authority and approved by the DOE, to all employees affected by the educational accountability program.

NOTE: Refer to Bulletin 1525 Personnel Evaluation
Accountability: A Guide for Implementation, Revised 2001.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3881 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§513. Professional Staff Development

A. The LEA shall provide opportunities for teachers and other staff members to participate in the development of policies and professional development activities to improve instruction and the administration of educational programs.

B. Teachers and other staff members may participate in the development of school policies that improve instruction and the administration of educational programs.

C. All staff members shall be provided opportunities to participate in professional development activities.

D. There shall be a continuing program of orientation of new personnel during their first year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.2; R.S. 17:3881 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§515. Teachers' Retirement System-Part-Time, Seasonal or Temporary Classroom Teacher

A. R.S. 11:162(C) provides that membership in Teachers' Retirement System of Louisiana shall be required of part-time, seasonal, or temporary employees, as defined in 26 CFR 31.3121(b)(7)-2, who are classroom teachers and who have or earn five or more years of creditable service in the Teachers' Retirement System of Louisiana.

B. Classroom Teacher

1. For the purposes of R.S. 11:162(C), classroom teacher shall mean:

a. An employee of an LEA under the control of BESE or any educational institution supported by and under the control of BESE, or any LEA:

i. whose job description and assigned duties include the instruction of pupils in courses in traditional or nontraditional classroom situations for which daily pupil attendance figures for the school system are kept; and

ii. who is classified under Object Code 112, as provided in Bulletin 1929, Louisiana Administrative Code Title 28, Part XLI §901.B.1.b, or is performing the functions, on a substitute basis, of an individual classified under Object Code 112.

b. Instruction of pupils, as used in Subparagraph B.1.a.i, shall include activities dealing directly with the interaction between teachers and pupils. Instruction may be provided for students in a school classroom, in another location such as a home or hospital, and in other learning situations such as those involving co-curricular activities. Instruction may also be provided through some other approved medium such as television, radio, telephone, and correspondence.

c. Classroom teachers shall include, but not be limited to, traditional subject area, special education, library media, resource, itinerant, music, band, chorus, physical education, home economics, agriculture, industrial arts, computer science, and business teachers.

d. A teacher's status as an "employee," as used in Paragraph B.1.a, shall be consistent with the employment classification made by his or her employing agency, pursuant to applicable law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:162(C).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§517. Acceptable Work Experience for Teacher Pay

A. Conditions of Employment. For purposes of determining salary, Louisiana public schools shall grant credit for work experience in compliance with the following criteria.

1. Louisiana Public Schools

a. Full-time/half-time satisfactory teaching experience at an LEA. Experience in a position that requires a valid Louisiana teaching/ancillary certificate. Proper certification for the position held; this is to include a temporary certificate, temporary teaching assignment, temporary employment permit, emergency permit, provisional certificate, and/or Circular 665 experience after regular certificate/licensure is secured.

b. Full-time college/university satisfactory teaching experience, not to include graduate assistantship.

c. Technical college teaching/instructional, full-time satisfactory experience when certified as a teacher for public elementary or secondary schools or technical colleges; proper temporary certification will count.

d. Full-time satisfactory work experience acquired by ancillary personnel while employed by an organization or institution if such personnel held the credentials required for ancillary certification at the time work was performed. This is not to include private practice.

2. Louisiana Nonpublic Approved Schools

a. The crediting of elementary and secondary teaching/instructional experience for Louisiana nonpublic teachers/ instructional employees, shall be in accordance with R.S. 17:424.2. Full-time college/university, career/technical, and ancillary experience shall be credited according to the standards stated in Subparagraphs A.1.b-d above. Experience must have been in a position requiring teaching/ancillary certificate or licensure. Proper temporary certification will count after regular certificate/licensure is secured.

3. Out-of-State Public Schools

a. The crediting of public elementary and secondary teaching/instructional experience for out-of-state teachers/instructional employees shall be in accordance with R.S. 17:424.3. Full-time college/university, career/technical and ancillary experience shall be credited according to the standards stated in Subparagraphs A.1.b-d above. Experience must have been in a position requiring teaching/ ancillary certificate or licensure; this does not include experience under temporary certification/ licensure.

4. Out-of-State Nonpublic Approved Schools

a. The crediting of elementary and secondary teaching/instructional experience for out-of-state nonpublic teachers/instructional employees is optional and shall be determined by each local school board.

5. Military

a. Credit for military service shall be in accordance with R.S. 17:423.

B. Length of Employment. An LEA may credit a full year of teaching/instructional service if the employee has provided teaching/instructional service for a minimum of 90 school days or one semester in one school year, in compliance with the above requirements. This credit will be given in the following year of employment except for individuals hired at mid-term who may be given credit for the fall semester of experience. The maximum credit for a school year is one year of experience.

C. This policy will not affect years of credit granted to individuals prior to its adoption by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:423; R.S. 17:424; R.S. 17:424.1; R.S. 17:424.2; R.S. 17:424.3.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§519. Educators' Right to Teach

A. Each LEA shall provide a copy of the following Educators' Right to Teach Act to all teachers at the beginning of each school year.

1. A teacher has the right to teach free from the fear of frivolous lawsuits, including the right to indemnification by the employing school board, pursuant to R.S. 17:416.1(C),

416.4, 416.5, and 416.11, for actions taken in the performance of duties of the teacher's employment.

2. A teacher has the right to appropriately discipline students in accordance with R.S. 17:223 and R.S. 17:416 through 416.16 and any city, parish, or other local public school board regulation.

3. A teacher has the right to remove any persistently disruptive student from his classroom when the student's behavior prevents the orderly instruction of other students or when the student displays impudent or defiant behavior and to place the student in the custody of the principal or his designee pursuant to R.S. 17:416(A)(1)(c).

4. A teacher has the right to have his or her professional judgment and discretion respected by school and district administrators in any disciplinary action taken by the teacher in accordance with school and district policy and with R.S.17:416(A)(1)(c).

5. A teacher has the right to teach in a safe, secure, and orderly environment that is conducive to learning and free from recognized dangers or hazards that are causing or likely to cause serious injury in accordance with R.S. 17:416.9 and 416.16.

6. A teacher has the right to be treated with civility and respect as provided in R.S. 17:416.12.

7. A teacher has the right to communicate with and involve parents in appropriate student disciplinary decisions pursuant to R.S. 17:235.1 and 416(A).

8. A teacher has the right to be free from excessively burdensome disciplinary paperwork.

B. No LEA shall establish policies that prevent teachers from exercising the rights listed above.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:416.18.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

Chapter 7. Records and Reports

§701. Maintenance and Use of System Records and Reports

A. The LEA and school shall maintain accurate and current information on students, personnel, instructional programs, facilities, and finances.

B. The maintenance, use, and dissemination of information included in system and school records and reports shall be governed by written policies adopted by the local educational governing authority and/or other applicable educational governing authorities. The policies shall conform to the requirements of all applicable state and federal laws, including, but not limited to, the Louisiana Public Records Act, R.S. 44:1 et seq., the Family Educational Rights and Privacy Act, 20 U.S.C. 1232q and 45 CFR 99.1 et seq., the Individual with Disabilities Education Act, 20 U.S.C. 1400 et seq., 17:1941 et seq. and R.S. 17:1237.

C. Information files and reports shall be stored with limited accessibility and shall be kept reasonably safe from damage and theft.

D. Each parish superintendent shall keep a record of all business transacted by him or her as parish superintendent; the names, numbers, and description of school districts; the tabulation of reports made monthly to him or her by the principals of his or her schools; and all other papers, books, and documents of value connected with said office, which shall be at all times subject to inspection and examination by

the State Superintendent of Education, or by any officer, or citizen. In addition to the annual report to the State Superintendent of Education, s/he shall furnish such narrative, and such information as the State Superintendent of Education or BESE may from time to time require of him or her.

1. Parish superintendents and teachers of the public schools of the state shall make and keep such school records as required by the State Superintendent of Education, prior to receiving their monthly salaries.

2. Each principal of a school shall make reports to the parish superintendent of schools as required. If any principal willfully neglects or fails to do this, the parish superintendent of schools may withhold the salary due until the report is satisfactorily made.

E. Each LEA/school shall maintain necessary records for the effective operation of the LEA/school. These records shall be retained by the LEA for not less than three years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:93; R.S. 17:415.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§703. Student Records

A. Each school shall keep records for the registration and attendance of students and shall maintain an up-to-date permanent cumulative record of individual students showing personal data and progress through school.

1. Student cumulative records shall continually be updated and, when applicable, contain the following:

a. name, gender, social security number or a state-assigned identification number, date of admission, and date of birth;

b. name and address of parents, legal guardian, and/or next of kin;

c. language or means of communication, spoken or understood;

d. a cumulative record of the student's progress through the curriculum;

e. health history;

f. student grades;

g. attendance records;

h. results of vision and hearing screening;

i. all immunizations given in accordance with the requirements of the State Department of Public Health recorded on a cumulative health record;

j. scores on LEAP 21 tests and scores on local testing programs and screening instruments necessary to document the local criteria for promotion;

k. information (or reasons) for student placement, including promotion, retention, and/or remediation and acceleration;

l. information on the outcome of student participation in remedial and alternative programs; and

m. a copy of the letter informing the parent of either the placement of the student in or the removal of the student from a remedial education program.

2. The following are applicable to students eligible under IDEA or Section 504:

a. records of parent/teacher conferences prior to referral to pupil appraisal;

b. results of all educational screening information;

c. educational interventions and their results;

d. multi-disciplinary evaluation reports;

e. a copy of the IEP, including least restrictive environment justification;

f. a copy of the Individualized Accommodation Program (IAP);

g. a copy of the parent's written consent for the student to be moved from an alternative to a regular placement program;

h. documentation of contact with School Building Level Committee prior to referral to pupil appraisal;

i. access sheet for special education confidentiality; and

j. LEAP 21 Individual Student Reports.

B. Each teacher shall be provided with record forms or materials on which the roster of each class taught shall be kept and on which all data used to determine student progress shall be recorded.

1. This record is and shall remain the property of the school and shall be filed with the principal at the end of the school.

C. Student records shall be reviewed regularly, and results shall be used for instructional planning, student counseling, and placement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:170; R.S. 17:182; R.S. 17:232; R.S. 17:391.3; R.S. 17:391.4; R.S. 17:400; R.S. 17:1944; R.S. 17:2112.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§705. Student Academic Records and Reports

A. A report of each student's progress in school shall be provided to parents or guardians at intervals designated by the local educational governing authority and shall contain a report of progress made by the student in each subject or area.

B. Schools shall prepare a progress report related to the short-term objectives in the IEP/Placement document for each exceptional child and must provide the report to the parent at the same time as report cards are provided to all regular students.

C. Parents shall be informed of the results of statewide assessment tests.

D. No education record of any student may be withheld as a result of lack of payment of any fine, debt or other outstanding obligation.

E. An education record of a student may be inspected by the student or his or her parents in accordance with the federal Family Education Rights and Privacy Act.

F. Each LEA shall submit to the president of the Senate and the speaker of the House of Representatives a list of students in grades 9-12 who have attained a grade point average of at least a 3.5 on a 4.0 scale or the equivalent grade point in any LEA which uses a different grading scale for the work done during that school year in order that such students may receive the Legislative Academic Achievement Award.

AUTHORITY NOTE: Promulgated in accordance with USCS 1232g; R.S. 17:112; R.S. 17:177; R.S. 17:391.7(D).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§707. Evaluation of Transfer Students' Records

A. A student transferred from a state-approved school, in- or out-of-state, shall be allowed credit for work completed in the previous school. When a student transfers from one school to another, a properly certified transcript,

showing the student's record of attendance, achievement, immunization, and the units of credit earned, shall be required.

1. Records, including evaluation information for exceptional students transferring from another system, shall be reviewed by pupil appraisal and approved by the Supervisor of Special Education before the student is enrolled in a special education program.

2. Students in grades five and nine transferring to the public school system from any in-state nonpublic school (state approved and unapproved), or home schooling program, or Louisiana resident transferring from any out-of-state school, shall be required to pass the English language arts and Mathematics components portions of the state-developed LEAP 21 placement test.

B. Local school officials from any state-approved school receiving a student from an unapproved school, in- or out-of-state, approved home study programs, or foreign schools will determine the placement and/or credits for the student through screening, evaluations, and/or examinations.

1. The principal and/or superintendent may require the student to take an examination on any subject matter for which credit is claimed.

2. The school issuing the high school diploma shall account for all credits required for graduation, and its records will show when and where the credit was earned.

3. Students in grades five and nine transferring to the public school system from any in-state nonpublic school (state approved and unapproved), or home schooling program, or Louisiana resident transferring from any out-of-state school, shall be required to pass the English language arts and Mathematics components of the state-developed LEAP 21 placement test.

C. Credits earned by students in American schools in foreign countries shall be accepted at face value.

NOTE: Refer to Bulletin 1566 Guidelines for Pupil Progression.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:236.2.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§709. Transfer of Student Records

A. The principal shall provide for the transfer of the education records, including special education records, of any student who was enrolled at the school upon the written request of any authorized person on behalf of an educational facility within or outside of the state of Louisiana, where the student has become enrolled or is seeking enrollment.

1. The transfer of such records, whether by mail or otherwise, shall occur not later than 10 business days from the date of receipt of the written request.

2. If a student has been expelled, the transferred records shall include the dates of the expulsion and the reasons for which the student was expelled.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:112; R.S. 17:221.3.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§711. Textbook Records

A. The school and LEA shall keep a record of all textbooks on hand at the beginning of the session, as well as records of those added and those worn out.

B. Refer to §1703 for more policies related to textbooks.

C. Refer to Bulletin 1794 Policy and Procedure Manual Textbooks (LAC 28:XXXIII) for information on the disposal of old textbooks.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:8; R.S. 17:8.1; R.S. 17:93.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§713. Attendance Records

A. The attendance of all school students shall be checked each school day and at the beginning of each class period and shall be verified by the teacher keeping such records which shall be open to inspection by the visiting teacher, or supervisor of child welfare and attendance, or duly authorized representative, at all reasonable times. All schools shall immediately report to the visiting teacher, or supervisor of child welfare and attendance, any unexplained, unexcused, or illegal absence, or habitual tardiness.

B. No public elementary or secondary school student who has not been emancipated by judicial decree or by marriage shall be permitted for any reason to leave school during the school day on his or her own authority.

1. The school principal or the principal's designee shall make all reasonable efforts to notify the parent or other person responsible for the student's school attendance of any such prohibited absence by a student.

2. For the purposes of notification as required by this Paragraph, a parent or other person responsible for a student's school attendance may designate in writing with the school principal one or more alternative contact persons.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:232; R.S. 17:235.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§715. System and School Reports

A. Reports required by the DOE and BESE shall be made on appropriate forms, shall contain accurate information, and shall be returned by the specified date.

B. On a date specified by the DOE, the local superintendent shall forward the Annual System Report to the DOE.

C. On a date specified by the DOE, the principal shall forward the Annual School Report, through the local superintendent's office, to the DOE.

1. The certification form shall be signed by the superintendent verifying that all data submitted are accurate.

D. Each local superintendent shall keep a record of all business transacted by him as superintendent.

E. On dates specified by the DOE, the local superintendent shall forward the information required for the completion of the Annual Financial and Statistical Report to the DOE.

1. Schools shall furnish information required for the completion of the Annual Financial and Statistical Report on report forms supplied by the LEA.

F. Each LEA shall provide reports as required by the DOE for the review of the status and needs for additional construction and/or renovation of the physical facilities of the physical facilities of the LEA.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.5; R.S. 17:92; R.S. 17:93.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§717. Reports of High School Credit

A. A finalized list of graduates and PreGED/Skills Options Program completers shall be submitted by the state-approved high school accompanied by the assurance statement signed by both the principal and the superintendent of the LEA in order to receive diplomas.

1. Prior to February 15 for mid-term graduates and PreGED/Skills Options Program completers and prior to June 15 for spring graduates and PreGED/Skills Options Program completers, a certificate of high school credits for each graduate and each PreGED/Skills Options Program completer shall be submitted by each state-approved high school as required.

2. A certificate of high school credits (transcript) shall be submitted by the state-approved high school in order for a diploma or an Options Program skill certificate to be issued to those students graduating or exiting at times other than mid-term and spring.

3. Upon receipt of the finalized list of graduates and PreGED/Skills Options Program completers, the DOE will issue the diplomas and the Options Program skill certificates.

B. Prior to the date of graduation or Options Program completion, the DOE shall have the authority to determine the issuance of a diploma or an Options Program skill certificate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(11).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§719. Reports to the Supervisors of Child Welfare and Attendance

A. The principals, or administrators, and the teachers of all schools shall report the names, birth dates, race, parents, and residence of all students in attendance at their schools or classes in writing to the central office within 30 days after the beginning of the school term or session, and at such other times as may be required by BESE or the DOE.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:232.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§721. School and School System Financial Records

A. Each local educational governing authority shall submit to the State Superintendent of Education a copy of its adopted budget no later than September 30 of each year, which shall include the same line items as prescribed by BESE for inclusion in the financial and statistical report as well as a general summary of the adopted budget.

B. Each school shall have an accounting system and an annual audit of all activity funds.

1. All expenditures from activity funds shall be approved by the principal or a designated staff member.

2. The principal of the school shall be bonded.

C. Funds shall be budgeted and expended and facilities assigned to ensure advantageous educational opportunities at all grade levels throughout the community.

1. All funds shall be used in accordance with provisions of the agency providing such funds.

2. LEAs shall maintain an accurate audit trail of allocated state and federal funds.

3. Each LEA shall allocate annually to each secondary school in the school system, in addition to any other funding,

not less than \$50 per student enrolled at the school in a vocational agriculture, agribusiness, or agriscience program for use in providing adequate instructional materials and supplies for such students.

D. Each public school principal shall maintain a school fund as provided in R.S. 17:414.3 for the management of any money that accrues to the benefit of the school.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:88; R.S. 17:181; R.S. 17:414.3.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§723. Other Reports

A. Any other records and reports applicable to the LEA and to schools as required by BESE or the DOE shall be submitted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6; R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

Chapter 9. Scheduling

§901. Scheduling

A. The purpose of scheduling within available time frames and staff resources shall be to meet the educational needs of students.

1. A copy of the daily/weekly schedule of work providing for all subject areas in the curriculum shall be on file in the principal's office and shall be posted at all times.

B. Prior to student scheduling each year, each middle, junior, or high school shall provide the parent/guardian/legal custodian with a listing of course offerings, the content of each, and high school graduation requirements where appropriate.

1. By the end of the eighth grade, each student shall develop, with the input of his family, a Five Year Educational Plan. Such a plan shall include a sequence of courses that is consistent with the student's stated goals for one year after graduation.

2. Each student's Five Year Educational Plan shall be reviewed annually thereafter by the student, parents, and school advisor and revised as needed.

3. Every middle, junior, or high school shall require that the parent/guardian/legal custodian sign his/her child's schedule form and the Five Year Educational Plan for students in grades 8-12.

C. Student scheduling shall be individually appropriate and flexible to allow entry into and exit from courses and course sequences that are available for meeting curricular requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:175; R.S. 17:183.2; R.S. 17:391.13; R.S. 17:401.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§903. Exceptional Students

A. Exceptional students shall not be placed in alternative educational settings that exceed the maximum pupil/teacher ratio or the three-year chronological age span. The age span requirement does not apply to programs for secondary-aged students (students aged 14 through 21).

B. Special class, separate schooling, or other removal of students with disabilities from the regular educational environment shall occur only when the nature or severity of the individual's needs is such that education in regular class with the use of supplementary aids and services cannot be

achieved satisfactorily. Reasons for selecting a more restrictive environment may not be based solely on category of disability, severity of disability, availability of educational or related services, administrative convenience or special equipment. Refer to Bulletin 1706C Subpart A-Regulations for Students with Disabilities, §446.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:151; R.S. 17:1946.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§905. Elementary Grades Per Class

A. Elementary teachers shall teach no more than two grades in a combined group except in band, music, and art.

1. This policy shall not apply to teachers of exceptional students whose IEP committees have determined their placement to be the regular education classroom.

2. Waivers may be granted to allow for multi-age, multi-ability groupings when appropriate justification and documentation have been provided.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6; R.S. 17:7; R.S. 17:151; R.S. 17:174.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§907. Secondary Class Times and Carnegie Credit

A.1. Since each school shall provide 63,720 minutes of instructional time per year, the minimum amount of instructional time required for one Carnegie credit to be earned shall be as follows:

- a. 10,620 minutes for a six-period schedule;
- b. 9,103 minutes for a seven-period schedule; and
- c. 7,965 minutes for eight-period or 4 x 4 block schedules.

2. For other schedule configurations, a minimum of 7,965 minutes of instructional time must be met for one Carnegie credit to be earned.

B. The schedule of subjects offered in the program of studies may be arranged by school principals in order to reduce or increase the number of class periods per week provided that the yearly aggregate time requirements and Carnegie credit time requirements are met.

C. The minimum length of any high school class in which one-half (1/2) Carnegie unit of credit is earned shall be within ±120 minutes of one-half (1/2) of the total minutes required for one full Carnegie unit of credit.

D. Any high school class scheduled for a 90-minute block of instructional time must meet for a minimum of one full semester, or the equivalent, in order to earn a Carnegie unit of credit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:154.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§909. Length of School Day Requirements

A. For grades prekindergarten-12, the minimum school day shall include 360 minutes of instructional time, exclusive of recess, lunch, and planning periods.

B. The minimum instructional day for a full-day prekindergarten and kindergarten program shall be 360 minutes.

C. Each LEA may authorize some or all of its schools to modify the total number of instructional minutes per day and instructional days per year provided that 63,720 minutes of instructional time per year are met.

D. Each LEA has the option to make the determination regarding the length of the school day for high school seniors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:154.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§911. Planning Time and Lunch Periods

A. Subject to the availability of state funds for this purpose, LEAs shall provide a minimum of 45 minutes daily planning time, or its weekly equivalent, and a minimum of 30 minutes for lunch each day which shall be duty-free for every teacher actively engaged in the instruction and supervision of students in the public schools. Implementation of planning time and lunch periods for teachers as required in this Section shall not result in a lengthened school day.

B. This Section shall not apply to a local educational governing authority operating under the terms of a collective bargaining agreement applicable to teachers employed by the local educational governing authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:434.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§913. Class Size and Ratios

A. The maximum enrollment in a class or section in grades K-3 shall be 26 students and in grades 4-12, 33 students, except in certain activity types of classes in which the teaching approach and the materials and equipment are appropriate for large groups.

B. No teachers at the secondary level shall instruct more than 750 student hours per week, except those who teach the activity classes.

1. When a number of staff members are involved in a cooperative teaching project, the amount of each person's involved time may be counted in computing the individual teacher's load.

C. The maximum class size for Health and Physical Education in grades K-8 and in Physical Education I and II shall be 40. No class may be combined with Physical Education I or II if the total number of students taught is more than 40.

D. The system-wide, student classroom teacher ratio in grades K-3 shall be a maximum of 20 students to one classroom teacher.

NOTE: Refer to Bulletin 1706C Subpart A-Regulations for Students with Disabilities_for pupil/teacher ratios for special education.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17: 151; R.S. 17:174.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§915. Student Activities

A. Each school shall have a well-balanced and effectively administered student activity program.

B. Each LEA shall adopt a written policy on student activities that shall:

1. distinguish between co-curricular and extracurricular activities within the context of the definitions below:

a. co-curricular activities are those activities that are relevant, supportive, and an integral part of the course of study in which the student is enrolled and which are under

the supervision and/or coordination of the school instructional staff;

b. extracurricular activities are those activities which are not directly related to the program of studies and which are under the supervision and/or coordination of the school instructional staff and which are considered valuable for the overall development of the student;

2. define an appropriate place for such activities in the school's program;

3. limit and control interruptions of instructional time in the classroom;

4. limit the number of absences allowed for such activities; and

5. specify student eligibility requirements.

C. Extracurricular activities shall not be scheduled during instructional time.

D. Extracurricular services and activities shall be offered to all exceptional students in a manner that allows them equal opportunity to participate in services and activities.

E. No school shall permit the existence or functioning of any fraternity, sorority, or secret society.

F. The Scholastic Rule of the Louisiana High School Athletic Association (LHSAA) shall be adhered to by all high schools under its jurisdiction.

NOTE: See for reference the LHSAA Web site at www.lhsaa.org.

G. All athletic contests shall be scheduled after school hours.

1. When possible, no instructional time should be missed by student athletes when traveling to athletic events.

2. If teams are allowed to be released from school early to attend these events, released time should be kept to a minimum and the LHSAA's Regular Season Released-Time Plan must be followed when determining the released time to be used.

3. All class work missed by student athletes while attending athletic events must be made up as soon as possible in the same manner that would be required of other students.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:176.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

Chapter 11 Student Services

§1101. Student Services Design

A. Each LEA shall maintain a balanced, comprehensive, interdisciplinary, and coordinated program of student services. The student services program shall be identified with appropriate functions to assure leadership in accordance with an organizational plan.

B. The goals of student services shall be similar and related to those of the instructional program.

1. These services shall be designed to provide a cooperative approach to problems that require a specialized, individualized service not generally provided within the regular classroom setting and to provide resources to other school personnel, parents, and others concerned with the student and his or her development.

2. Student advocacy shall be the ultimate and foremost goal of all student services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:251; R.S. 17:252; R.S. 17:416.17.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§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. Students between the ages of 17 and 18 may withdraw from school prior to graduation with the written consent of their parents, tutors, or legal guardians. A parent, tutor, or legal guardian who has given written consent for a student under his or her control or charge to withdraw from school prior to graduation, or 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. The parent, tutor, or other person responsible for the school attendance of a student who is under age 18 and who is enrolled in school beyond his sixteenth birthday may request that the student be allowed to attend an alternative education program or a career and technical education program. In the case of a student who has no parent, tutor, or other person responsible for his school attendance, the superintendent of the LEA may act on behalf of the student in making such a request. Upon such request, the superintendent of the LEA in which the student is enrolled shall be responsible for determining whether the student remains in the regular school setting or attends an alternative education program or a career and technical education program, and for developing and implementing an individualized plan of education for such student.

2. The compulsory attendance law does not prohibit a student who is at least 16 years of age and who meets the criteria in §2703 from attending an adult education program approved by BESE. A parent, tutor, or other person responsible for the school attendance of a child who is at least 16 years of age but under age 18 and who is enrolled in and is fulfilling the attendance requirements of an adult education program that is approved by BESE shall be considered to be in compliance with the compulsory attendance law.

C. Students shall be expected to be in attendance every student-activity day scheduled by the local educational governing authority.

D. A student is considered to be in attendance when he or she is physically present at a school site or is participating in an authorized school activity and is under the supervision of authorized personnel.

1. This definition for attendance would extend to students who are homebound, assigned to and participating in drug rehabilitation programs that contain a state-approved education component, or participating in school-authorized field trips.

a. Half-Day Attendance. Students are considered to be in attendance for one-half day when they:

i. are physically present at a school site or participating in authorized school activity; and

ii. are under the supervision of authorized personnel for more than 25 percent but not more than half (26-50 percent) of the students' instructional day.

b. Whole-Day Attendance. Students are considered to be in attendance for a whole day when they:

i. are physically present at a school site or are participating in an authorized school activity; and

ii. are under the supervision of authorized personnel for more than 50 percent (51-100 percent) of the students' instructional day.

E. A student who is enrolled in regular education and who, as a result of health care treatment, physical illness, accident, or the treatment thereof, is temporarily unable to attend school, shall be provided instructional services in the home or hospital environment (Homebound Instruction).

F. The LEA shall provide educational and related services to exceptional students in accordance with the IEP for no fewer than 177 days, or the equivalent, during the normal 182-day school cycle.

G. In order to be eligible to receive grades, high school students shall be in attendance a minimum of 81 days, or the equivalent, per semester or 162 days a school year for schools not operating on a semester basis. Elementary students shall be in attendance a minimum of 160 days a school year.

H. Each LEA shall develop and implement a system whereby a student's parent, tutor, or legal guardian is given oral notification, or if oral notification cannot be provided, then written notification when that child has been absent from school for five school days in schools operating on a semester basis and for 10 days in schools not operating on a semester basis.

I. The only exception to the attendance regulation shall be the enumerated extenuating circumstances that are verified by the Supervisor of Child Welfare and Attendance. Students shall be temporarily excused from the attendance regulation for the following reasons:

1. extended personal physical or emotional illness as verified by a physician or dentist;
2. extended hospital stay as verified by a physician or dentist;
3. extended recuperation from an accident as verified by a physician or dentist; or
4. extended contagious disease within a family as verified by a physician or dentist.

J. For any other extenuating circumstances, the student's parents or legal guardian must make a formal appeal in accordance with the due process procedures established by the LEA.

K. The only other exception to the attendance regulations shall be other absences that are verified by the principal or his/her designee as stated below:

1. prior school system-approved travel for education;
2. death in the family (not to exceed one week); or
3. natural catastrophe and/or disaster.

L. Students who are verified as meeting extenuating circumstances, and therefore eligible to receive grades, shall not receive those grades if they are unable to complete makeup work or pass the course.

M. Students participating in school-approved field trips or other instructional activities that necessitate their being

away from school shall be considered to be present and shall be given the opportunity to make up work.

NOTE: Refer to §1117.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:221; R.S. 17:226; R.S. 17:233.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§1105. Types of Absences

A. The days absent for elementary and secondary school students shall include temporarily excused absences, unexcused absences, and suspensions.

B. Students shall be considered temporarily excused from school for personal illness, serious illness in the family, death in the family (not to exceed one week), or for recognized religious holidays of the student's own faith and shall be given the opportunity to make up work.

C. Students shall not be excused for any absences other than those listed in §1105 B, shall be given failing grades in those subjects for those days missed, and shall not be given an opportunity to make up work.

D. Students shall not be excused from school to work on any job, including agriculture and domestic services, even in their own homes or for their own parents or tutors, unless it is part of an approved instructional program.

E. Students absent from school as a result of any suspension shall be counted as absent, shall be given failing grades for those days suspended, and shall not be given an opportunity to make up work.

AUTHORITY NOTE: Promulgated in accordance with R. S. 17:226; R.S. 17:235.2; R.S. 17:416.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§1107. Entrance Requirements

A.1. All students, upon entering Louisiana schools for the first time, shall present:

- a. an official birth certificate (Children born in Louisiana will be given a 15 day grace period to secure a copy of their birth record. Children born out of this state will be given 30 days' grace in which to produce a copy of their birth record);
- b. a record of immunization; and
- c. an official Social Security card.

2. In cases where birth certificates and/or birth verification forms cannot be obtained, the school principal may accept whatever positive proof of age, race, and parentage is available. It shall be left to the discretion of the parish or city superintendent of schools, subject to the authority of the school board, as to whether or not a child shall continue in school upon failure to comply herewith.

B. Every child, as a prerequisite to enrollment in any first grade of a public school, shall meet one of the following criteria:

1. have attended a full-day public or private kindergarten for a full academic year; or
2. have satisfactorily passed academic readiness screening administered by the LEA at the time of enrollment for first grade.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:151.3; 17:170; 17:222.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§1109. Assignment and Transfer of Students

A. After the twenty-first calendar day of the school year, no student shall transfer from any public school to any other public school unless the person having legal custody moves the residence to a location in the area of the school to which the student normally would have been assigned.

B. No student may be enrolled in nor continue to attend a school if the residence of the student is a temporary residence established primarily to evade assignment to the school to which the student normally would have been assigned had the temporary residence not been established.

C. LEAs may, by mutual agreement, provide for the admission to any school of students residing in adjoining parishes and for transfer of school funds or other payments by one board to another for, or on account of, such attendance.

D. If not specifically contrary to the provisions of an order of a court of competent jurisdiction providing for the assignment of students within the LEA, a city or parish school board shall assign a student to attend any public school requested by a parent or other person responsible for the student's school attendance when the requested school has space available and is of a suitable grade level, and the child resides not more than one mile from such school measured by the distance to be traveled on public streets or highways, or by the boundary of a subdivision. Exceptions are as follows.

1. This provision does not apply in Orleans Parish.

2. If not specifically contrary to the provisions of an order of a court of competent jurisdiction providing for the assignment of students within the LEA, a city or parish school board in any parish having a population of at least 140,000 but not more than 160,000 persons and the Caddo Parish School Board, shall assign a student to attend any public high school requested by a parent or other person responsible for the student's school attendance when the requested school has space available and is of a suitable grade level, and the student resides not more than 2 miles from such school. A school board shall not be required to provide transportation to any student enrolled in high school pursuant to the provisions of this Paragraph.

NOTE: Refer to §303(D).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:81.1; R.S. 17:105; R.S. 17:221.2.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§1111. Age Requirements

A. Special education shall be provided for exceptional students aged 3 through 21, unless they have received a diploma. The LEA shall have the option to provide preschool special education to students with disabilities aged 0 through 2 years.

B. Each LEA shall provide for and offer, in every school having a first grade or in a parish kindergarten center, full-day kindergarten instruction to each eligible child.

C. The minimum age for kindergarten shall be one year younger than the age required for that child to enter first grade as established by the local educational governing authority.

1. Each local educational governing authority, by rule, may provide, for a child of younger age to enter kindergarten; provided that such child has been evaluated

and identified as gifted in accordance with the regulations of the DOE for such evaluation. Any child admitted to kindergarten pursuant to this Paragraph shall be eligible to enter first grade upon successful completion of kindergarten, provided all other applicable entrance requirements have been fulfilled.

2. Any child transferring into the first grade of a public school from out-of-state and not meeting the requirements herein for kindergarten attendance, shall be required to satisfactorily pass an academic readiness screening administered by the LEA prior to the time of enrollment for the first grade.

3. Any child not able to meet the kindergarten attendance requirements of this Section due to illness or extraordinary, extenuating circumstances as determined by the local educational governing authority, shall be required to satisfactorily pass an academic readiness screening administered by the LEA prior to the time of enrollment for the first grade.

4. Every parent, tutor, or other person having control or charge of a child who is eligible to attend full-day kindergarten, as a prerequisite to enrollment in any first grade of a public school shall send such child to attend public or private full-day kindergarten when such instruction is offered in the public schools, or ensure that such child is administered an academic readiness screening prior to the time established for the child to enter first grade.

D. The age at which a child may enter the first grade of any public school at the beginning of the public school session shall be six years on or before September 30 of the calendar year in which the school year begins.

1. Any local educational governing authority in a parish having a population of at least 450,000 may adopt, by rule, and enforce ages for entrance into first grade in the schools in its system which vary from the provisions of this Section. All children admitted into school as a result of a rule adopted pursuant to such a rule shall be counted in reports submitted for funding under the Minimum Foundation Program (MFP) and money allocated pursuant to such program shall be based on the report which includes such children.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:151.3; R.S. 17:222.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§1113. Orientation for Parents of First Time Students

A. Each student entering public school within the state for the first time, including kindergarten, shall present at the time of registering or entering satisfactory evidence that at least one of his parents or guardians has completed the orientation course required by this Section. The certificate of completion required by this Section shall constitute satisfactory evidence.

B. Each local educational governing authority shall conduct a parent orientation course according to the following guidelines.

1. The program shall be not less than three hours in duration and shall be scheduled to accommodate the attendance of the parents or guardians without the loss of work.

2. All parents or guardians shall be encouraged to attend as many times as they wish.

3. The local educational governing authority shall provide every parent or guardian who attends the program a certificate verifying completion of the course.

4. At the parent orientation meeting, the local educational governing authority or its representative shall provide each parent or guardian a copy of and shall explain school board policies which:

a. govern the discipline of students, including but not limited to corporal punishment, detention, suspension, and expulsion of students;

b. govern the attendance of students and truancy sanctions;

c. govern the behavior and decorum expected of students at all times;

d. govern dress codes for students for all school functions, including but not limited to in-school and out-of-school functions, including but not limited to dances; and

e. address any other such matters as the local educational governing authority may deem appropriate.

5. At the parent orientation meeting, the local educational governing authority or its representative shall explain:

a. existing grading systems for the LEA;

b. standardized test procedures in effect, including but not limited to preparation for tests, procedures to be followed on the testing days, and an explanation of the assessment of the test results;

c. policies governing promotion of students from grade to grade and procedures implemented when a student fails to attain sufficient standards for promotion; and

d. other such matters as the local educational governing authority may deem appropriate.

C. Completion of one orientation course shall be satisfactory for the enrollment or registration of all children of a parent or guardian.

D. A local educational governing authority shall schedule not less than three orientation meetings during a school year, and at various times during the day, in order to facilitate attendance with as little inconvenience to the parents or guardians as possible. In order to carry out the intent and purpose of this Section, a local educational governing authority shall schedule not less than three orientation meetings between March and September of each year, and shall publish notice and otherwise seek to notify parents or guardians whose children may enter a school in the system of the attendance requirements.

E. If teachers of any LEA are required to attend an orientation meeting for first time parents as part of their job responsibilities on a day or at a time when the teachers would not otherwise have been required to work, then the teachers shall be compensated at their usual rate of pay on a pro rata basis.

F. Under no circumstances shall a student be denied entry into school because of noncompliance by a parent or guardian with the provisions of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:235.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§1115. Statements of Compliance

A. Each local educational governing authority shall require each student in grades 4 through 12 in each school under the control of the local educational governing

authority annually to sign a statement of compliance committing to do at least all of the following:

1. attend school daily, except when absent for reasons due to illness or other excused absence;

2. arrive at school on time each day;

3. demonstrate significant effort toward completing all required homework assignments; and

4. follow school and classroom rules.

B. Each parent or guardian of each student in grades 4 through 12 in any public school in the state annually shall sign a statement of compliance committing to do at least all of the following:

1. ensure that his/her child attends school daily except for excused absences;

2. ensure that his/her child arrives at school on time each day;

3. ensure that his/her child completes all required homework assignments; and

4. attend all required parent and teacher or principal conferences.

C. Prior to the signing by any student of the statement of compliance as required in this Section, each homeroom teacher or teacher designated by the principal shall, on the first day of school each school year, provide information to and answer any questions from students in grades 4 through 12 relative to the statement of compliance.

D. Each local educational governing authority shall adopt rules and regulations necessary for the implementation of this Section. Such rules and regulations shall include the following:

1. appropriate action to be taken against any student or parent or guardian who fails to comply with the signed statement as required in this Section; and

2. guidelines for homeroom teachers to provide information and answer questions about the compliance statements, including a specified amount of time necessary for teachers to accomplish such requirements.

AUTHORITY NOTE: Promulgated in accordance with R. S. 17:235.2.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§1117. Child Welfare and Attendance

A. Visiting teachers, supervisors of child welfare and attendance, and home-school coordinators shall give written notice, either in person or by registered mail, to the parent or guardian of a student within the compulsory school attendance age, when no valid reason is found for a student's nonenrollment or unexcused absence from school, requiring enrollment or attendance within three days from the date of notice.

B. Visiting teachers or supervisors of child welfare and attendance shall receive the cooperation of all teachers and principals in the parish or city in which they are appointed to serve.

C. Each school shall, upon the request of the LEA where the school is located, state whether any individual student is enrolled in such school and whether such pupil is fulfilling the compulsory attendance requirements.

D. Any student who is a juvenile and who is habitually absent from school or is habitually tardy shall be reported by visiting teachers and supervisors of child welfare and attendance to the family or juvenile court of the parish or city as a truant child, pursuant to the provisions of Chapter 2

of Title VII of the Louisiana Children's Code relative to families in need of services, there to be dealt with in such manner as the court may determine, either by placing the truant in a home or in a public or private institution where school may be provided for the child, or otherwise.

E. A student shall be considered habitually absent or habitually tardy when either condition continues to exist after all reasonable efforts by the principal and the teacher have failed to correct the condition after the fifth unexcused absence or fifth unexcused occurrence of being tardy within any month or if a pattern of five absences a month is established. The student's principal or the principal's designee, with the aid of the teachers, shall file a written report showing dates of absence or tardiness, dates and results of school contacts with the home, and such other information as may be needed by the visiting teacher or supervisor of child welfare and attendance.

NOTE: Refer to §1103.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:232, R.S. 17:235.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§1119. Health Screening

A. Every LEA, during the first semester of the school year or within 30 days after the admission of any students entering the school late in the session, shall test the sight, including color screening, for all first grade students, and hearing of each and all students under their charge, except those students whose parent or tutor objects to such examination. Such testing shall be conducted by appropriately trained personnel, and shall be completed in accordance with the schedule established by the American Academy of Pediatrics.

B. Upon the request of a parent, student, school nurse, classroom teacher, or other school personnel who has reason to believe that a student has a need to be tested for dyslexia, that student shall be referred to the school building level committee for additional testing. Local school systems may provide for additional training for school nurses to aid in identifying dyslexic students. Refer to §1123.

C. The LEA shall keep a record of such examination, shall be required to follow up on the deficiencies within 60, and shall notify in writing the parent or tutor of every student found to have any defect of sight or hearing. A written report of all such examinations shall be made to the State Superintendent of Education but shall not be made available to the public.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17: 2112

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§1121. Immunizations

A. All students entering any school within the state for the first time, at the time of registration or entry, shall present satisfactory evidence of immunity to or immunization against vaccine-preventable diseases according to a schedule approved by the office of public health, Department of Health and Hospitals, or shall present evidence of an immunization program in progress.

1. The schedule shall include, but not be limited to measles, mumps, rubella, diphtheria, tetanus, whooping cough, poliomyelitis, and hemophilus influenzae Type B invasive infections.

2. The schedule may provide specific requirements based on age, grade in school, or type of school. At its own discretion and with the approval of the office of public health, an educational institution or licensed day care center may require immunizations or proof of immunity more extensive than required by the schedule approved by the office of public health.

B. A student transferring from another LEA in or out of the state shall submit either a certificate of immunization or a letter from his personal physician or a public health clinic indicating immunizations against the diseases in the schedule approved by the office of public health having been performed, or a statement that such immunizations are in progress.

C. If booster immunizations for the diseases enumerated in the schedule approved by the office of public health are advised by that office, such booster immunizations shall be administered before the student enters a school system within the state.

D. School principals shall be responsible for checking students' records to see that the provisions of this Section are enforced.

E. No student seeking to enter any school shall be required to comply with the provisions of this Section if the student or his parent or guardian submits either a written statement from a physician stating that the procedure is contraindicated for medical reasons, or a written dissent from the student or his parent or guardian is presented.

F. In the event of an outbreak of a vaccine-preventable disease at the location of a school, the principal is empowered, upon the recommendation of the office of public health, to exclude from attendance unimmunized students until the appropriate disease incubation period has expired or the unimmunized person presents evidence of immunization.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:170.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§1123. Educational Screening and Evaluation

A. All LEAs shall ensure that appropriate educational screening and evaluation services are provided to students.

B. Every student in public school in grades kindergarten through third shall be screened, at least once, for the existence of impediments to a successful school experience. No student shall be screened if his parent or guardian objects to such screening.

1. Such impediments shall include:

- a. dyslexia and related disorders,
- b. attention deficit disorder, and
- c. social and environmental factors that put a student "at risk."

2. Students in need of services and/or assistance shall have it provided to them. Services for dyslexia and related disorders shall be provided in accordance with R.S. 17:7(11).

3. The screenings shall be done directly by elementary school counselors, pupil appraisal personnel, teachers, or any other professional employees of the LEA who have been appropriately trained, all of whom shall operate as advocates for the students identified as needing services or assistance. No screenings shall be done by persons who have not been trained to do such screenings.

C. Each LEA shall ensure that educational screening activities, conducted by a committee at the school level, shall be completed before a student is referred for an individual evaluation through pupil appraisal services.

D. Students who are experiencing learning or adjustment difficulties in a regular program, but are not thought to be exceptional, may receive support services from pupil appraisal by a referral from a committee at the school level. They should also be considered for such issues as dyslexia, attention deficit concerns, and any other area that might be contributing to their difficulties in the school setting.

E. Students thought to be exceptional shall be provided an individual evaluation by qualified personnel.

F. The LEA shall ensure that no student shall be placed in special education without a valid and current individual evaluation and an IEP signed by the student's parent(s).

G. Re-evaluation of exceptional students shall be conducted at least every three years.

NOTE: Refer to §1119.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7(11); R.S. 17:392.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§1125. Comprehensive Counseling

A. School counselors shall spend the majority of their time on providing direct counseling related to students. Responsibilities of the school counselor shall not include the administration of discipline, substitute teaching or administrative clerical duties. Refer to the Louisiana State Comprehensive Guidance and Counseling Model.

B. Each secondary school shall provide school counselors at a ratio of 1:450 or a major fraction thereof. Each elementary school and middle school shall provide school counselors when enrichment formula funds are provided.

C. A planned, comprehensive counseling program that is preventive and developmental in nature shall be provided in the school through an interdisciplinary approach.

1. These services shall include, but not be limited to providing counseling, educational information, career/occupational information, personal/social information services, referral services, consultation, orientation, testing, placement, and follow-up.

2. Individual and group counseling services shall be provided to students at all levels, as well as to teachers, administrators and parents.

3. Individualized counseling shall be provided to students to ensure appropriate placement into and exit from the courses and course sequences that are available for curricular requirements.

4. Immediate assistance shall be provided for students who experience problems, and long-range services shall be made available when necessary.

5. Each school shall have in the student counseling area or library center, guidance materials to aid students in their educational, vocational, personal, social, health, and civic development.

NOTE: Refer to the Louisiana State Comprehensive Guidance and Counseling Model.

AUTHORITY NOTE: Promulgated in accordance with R. S. 17:3002 et seq.; R.S. 17:3005.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§1127. Preventive Programs

A. Positive preventive programs are those programs aimed at identifying and eliminating problems that impede student learning.

B. Each school shall develop a professional approach to the prevention of nonattendance and to problems involving chronic absenteeism.

C. Each LEA shall include in the curriculum a program of substance abuse prevention, to include effective informational and counseling strategies, and information designed to reduce the likelihood that students shall injure themselves or others through the misuse and abuse of chemical substances.

1. The substance abuse programs and curricula shall also include procedures for identifying students who exhibit signs of misuse or abuse of such substances and procedures for referral for counseling or treatment.

D. Each LEA shall have a program on the prevention of crime and disruptive behavior. The program shall follow the minimum guidelines established by the DOE in Bulletin 1627 ~~Act~~ 689 Guidelines (Crime and Disruptive Behavior).

E. Each LEA may develop and implement, after submission to BESE for approval, a plan for the modification of approved course content and structure to produce interdisciplinary courses for purposes of enhancing dropout prevention programs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:13.1; R.S. 17:283; R.S. 17:403; R.S. 17:416.14.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§1129. Administration of Medication

A. Administration of Medication

1. Each local educational governing authority shall establish guidelines based upon the joint policy of BESE and the Louisiana State Board of Nursing for the administration of medications which shall include but not be limited to the following provisions.

2. Any waivers, deletions, additions, amendments, or alterations to this joint policy shall be approved by both boards.

B. Written Orders, Appropriate Containers, Labels and Information

1. Medication shall not be administered to any student without an order from a Louisiana, or adjacent state, licensed physician or dentist, and it shall include the following information:

- a. the student's name;
- b. the name and signature of the physician/dentist;
- c. the physician/dentist's business address, office phone number, and emergency phone numbers;
- d. the frequency and time of the medication;
- e. the route and dosage of the medication; and
- f. a written statement of the desired effects and the child specific potential of adverse effects.

2. Medication shall be provided to the school by the parent or guardian in the container that meets acceptable pharmaceutical standards and shall include the following information:

- a. name of pharmacy;
- b. address and telephone number of pharmacy;
- c. prescription number;
- d. date dispensed;

- e. name of student;
- f. clear directions for use, including the route, frequency, and other as indicated;
- g. drug name and strength;
- h. last name and initial of pharmacist;
- i. cautionary auxiliary labels, if applicable; and
- j. physician's or dentist's name.

3. Labels of prepackaged medications, when dispensed, shall contain the following information in addition to the regular pharmacy label:

- a. drug name;
- b. dosage form;
- c. strength;
- d. quantity;
- e. name of manufacturer and/or distributor; and
- f. manufacturer's lot or batch number.

C. Administration of Medication **C**General Provisions

1. During the period when the medication is administered, the person administering the medication shall be relieved of all other duties. This requirement does not include the observation period required in Paragraph C.5.

2. Except in life-threatening situations, trained unlicensed school employees may not administer injectable medications.

3. All medications shall be stored in a secured locked area or locked drawer with limited access except by authorized personnel.

4. Only oral medications, inhalants, topical ointments for diaper rash, and emergency medications shall be administered at school by unlicensed personnel.

5. Each student shall be observed by a school employee for a period of 45 minutes following the administration of medication. This observation may occur during instruction time.

6. School medication orders shall be limited to medication which cannot be administered before or after school hours.

D. Principal

1. The principal shall designate at least two employees to receive training and administer medications in each school.

E. Teacher

1. The classroom teacher who is not otherwise previously contractually required shall not be assigned to administer medications to students.

2. A teacher may request in writing to volunteer to administer medications to his/her own students.

3. The administration of medications shall not be a condition of employment of teachers employed subsequent to July 1, 1994.

4. A regular education teacher who is assigned an exceptional student shall not be required to administer medications.

F. School Nurse

1. The school nurse, in collaboration with the principal, shall supervise the implementation of the school policies for the administration of medications in schools to insure the safety, health, and welfare of the students.

2. The school nurse shall be responsible for the training of non-medical personnel who have been designated by each principal to administer medications in each school.

The training shall be at least six hours and include but not be limited to the following provisions:

- a. proper procedures for administration of medications including controlled substances;
- b. storage and disposal of medications;
- c. appropriate and correct record keeping;
- d. appropriate actions when unusual circumstances or medication reactions occur; and
- e. appropriate use of resources.

G. Parent/Guardian

1. The parent/guardian who wishes medication administered to his/her student shall provide the following.

a. A letter of request and authorization that contains the following information:

- i. name of the student;
- ii. clear instructions;
- iii. prescription number, if any;
- iv. current date;
- v. name, degree, frequency, and route of medication;
- vi. name of physician or dentist;
- vii. printed name and signature of parent or guardian;
- viii. emergency phone number of parent or guardian; and
- ix. statement granting or withholding release of medical information.

b. Written orders for all medications to be given at school, including annual renewals at the beginning of the school year.

c. A prescription for all medications to be administered at school, including medications that might ordinarily be available over the counter.

d. A list of all medications that the student is currently receiving at home and school, if that listing is not a violation of confidentiality or contrary to the request of the parent/guardian or student.

e. A list of names and telephone numbers of persons to be notified in case of medication emergency in addition to the parent or guardian and licensed prescriber.

f. Arrangements for the safe delivery of the medication to and from school in the original labeled container as dispensed by the pharmacist; the medication shall be delivered by a responsible adult.

g. Unit dose packaging shall be used whenever possible.

2. All aerosol medications shall be delivered to the school in premeasured dosage.

3. No more than a 35 school day supply of medication shall be kept at school.

4. The initial dose of a medication shall be administered by the student's parent/guardian outside the school jurisdiction with sufficient time for observation for adverse reactions.

5. The parent/guardian shall also work with those personnel designated to administer medication as follows:

a. cooperate in counting the medication with the designation school personnel who receives it and sign a drug receipt form;

b. cooperate with school staff to provide for safe, appropriate administration of medications to students, such

as positioning, and suggestions for liquids or foods to be given with the medication;

c. assist in the development of the emergency plan for each student;

d. comply with written and verbal communication regarding school policies;

e. grant permission for school nurse/physician consultation; and

f. remove or give permission to destroy unused, contaminated, discontinued, or out-of-date medications according to the school guidelines.

H. Student Confidentiality

1. All student information shall be kept confidential.

NOTE: There is a set of guidelines developed by an Administration of Medication Task Force and approved by the State Board of Nursing, which may be used by LEAs in developing their local administration of medication guidelines. These guidelines are available upon request in the BESE office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:436.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§1131. Communicable Disease Control

A. The DOE will work cooperatively with the Louisiana Department of Health and Hospitals for the prevention, control and containment of communicable diseases in schools.

B. Students are expected to be in compliance with the required immunization schedule.

1. The principal is required under R.S. 17:170 to exclude children from school attendance who are out of compliance with the immunizations required by this statute.

2. School personnel will cooperate with public health personnel in completing and coordinating all immunization data, waivers and exclusions, including the necessary Vaccine Preventable Disease Section's School Immunization Report forms (EPI-11, 11/84) to provide for preventable communicable disease control.

C. The superintendent may exclude a student or staff member for not more than five days from school or employment when reliable evidence or information from a public health officer or physician confirms him/her of having a communicable disease or infestation that is known to be spread by any form of casual contact and is considered a health threat to the school population. Such a student or staff member shall be excluded unless the public health officer approves school attendance or employment or the condition is no longer considered contagious.

D. When reliable evidence or information from a public health officer or physician confirms that a student/staff member is known to have a communicable disease or infection that is known not to be spread by casual contact, (i.e., HIV infection, Hepatitis B and other like diseases), the decision as to whether the affected person will remain in the school or employment setting will be addressed on a case-by-case basis by a review panel to ensure due process.

E. Mandatory screening for communicable diseases that are known not to be spread by casual contact is not warranted as a condition for school entry or for employment or continued employment.

F. Irrespective of the disease presence, routine procedures shall be used and adequate sanitation facilities will be available for handling blood or bodily fluids within

the school setting or on school buses. School personnel will be trained in the proper procedures for handling blood and bodily fluids and these procedures will be strictly adhered to by all school personnel.

G. Any medical information that pertains to students or staff members, proceedings, discussions and documents shall be confidential information. Before any medical information is shared with anyone in the school setting, a "Need to Know" review shall be made which includes the parent/guardian, student if age 18, employee or his/her representative unless the information is required to meet the mandates of federal or state law or regulation, or BESE policy.

H. Instruction on the principal modes by which communicable diseases, including, but not limited to, HIV infection, are spread and the best methods for the restriction and prevention of these diseases shall be taught to students and inservice education provided to all staff members.

I. Due Process Procedures

1. The Review Panel

a. Communicable diseases that are known not to be spread by casual contact (e.g., AIDS, Hepatitis B and other like diseases) will be addressed on a case-by-case basis by a review panel.

b. Panel Membership:

i. the physician treating the individual;

ii. a health official from the local parish health department;

iii. a child/employee advocate (e.g., nurse, counselor, child advocate, social worker, employee representative, etc., from in or outside the school setting) approved by the infected person or parent/guardian;

iv. a school representative familiar with the student's behavior in the school setting or the employee's work situation (in most cases the building principal or in the case of a special education student, a representative may be more appropriate);

v. either the parent/guardian of a child, a student if 18, employee, or their representative; and

vi. the school system superintendent.

c. The superintendent will assign a stenographer to record the proceedings.

d. The superintendent will designate the chair of the panel.

e. The chair of the review panel will designate the panel member who will write the "Proposal for Decision."

2. Case Review Process

a. Upon learning of a student/staff member with the LEA who has been identified as having a communicable disease that is known not to be spread by casual contact, the superintendent shall:

i. immediately consult with the physician of the student/staff member or public health officer who has evidence of a present or temporary condition that could be transmitted by casual contact in the school setting:

(a) if the public health officer indicates the student/staff member is well enough to remain in the school setting and poses no immediate health threat through casual contact to the school population because of their illness, the student/staff member shall be allowed to remain in the school setting while the review panel meets;

(b) if the public health officer indicates the student/staff member is currently not well enough to remain in the school setting and/or the affected individual currently has evidence of an illness or infection that poses a potential health threat through casual contact to the school population because of the illness, the student/staff member shall be excluded from the school setting while the review panel meets;

(c) if the public health officer recommends exclusion because a public health threat exists, the review panel will discuss the conditions under which the individual may return to school;

ii. immediately contact the review panel members to convene a meeting to explore aspects of the individual's case;

iii. submit to the parent/guardian or infected person if 18 or older, a copy of the Communicable Disease Control Policy;

iv. observe all federal and state statutes, federal and state regulations, and all BESE policies pertaining to provision of special educational services.

3. The Review Panel Process

a. The Review Panel shall meet within 24-48 hours to review the case. The following aspects should be considered in that review:

i. the circumstances in which the disease is contagious to others;

ii. any infections or illnesses the student/staff member could have as a result of the disease that would be contagious through casual contact in the school situation;

iii. the age, behavior, and neurologic development of the student;

iv. the expected type of interaction with others in the school setting and the implications to the health and safety of others involved;

v. the psychological aspects for both the infected individual remaining in the school setting;

vi. consideration of the existence of contagious disease occurring within the school population while the infected person is in attendance;

vii. consideration of a potential request by the person with the disease to be excused from attendance in school or on the job;

viii. the method of protecting the student/staff member's right to privacy, including maintaining confidential records;

ix. recommendations as to whether the student/staff member should continue in the school setting or if currently not attending school, under what circumstances he/she may return;

x. recommendations as to whether a restrictive setting or alternative delivery of school programs is advisable;

xi. determination of whether an employee would be at risk of infection through casual contact when delivering an alternative educational program;

xii. determination of when the case should be reviewed again by the panel; and

xiii. any other relevant information.

b. Proposal for Decision

i. Within three operational days (i.e., a day when the school board central office is open for business) after the panel convenes, the superintendent shall provide a written decision to the affected party based on the information brought out in the review panel process and will include the rationale for the decision concerning school attendance for the student or continuation of employment for staff member.

ii. If the decision is to exclude the affected person from the school setting because of the existence of a temporary or present condition that is known to be spread by casual contact and is considered a health threat, the written decision shall include the conditions under which the exclusion will be reconsidered.

iii. If the affected person is a special education student, an Individualized Education Program Conference must be convened to determine the appropriateness of the program and services for the student.

4. Appeal Process

a. Rehearing Request

i. The parent, guardian or affected person who considers the Proposal for Decision unjust may request a rehearing, in writing, directed to the superintendent within three days of the date of the decision. Grounds for requesting a rehearing are limited to:

(a) new evidence or information that is important to the decision; or

(b) substantial error of fact.

ii. The superintendent, within 48 hours from the date of receipt of the request for rehearing, shall either grant or deny the request for rehearing. If the request for rehearing is granted, the chair shall reconvene the same panel that originally heard the matter within five business days of the date the hearing is granted.

iii. Within three operational days (a day when the school system's central office is open for business) after the rehearing, the superintendent shall submit the decision to the parent/guardian or affected person.

b. Request for a Local Board Decision

i. The parent/guardian, affected person or their representative, may make a final written appeal to the president of the local board of education within five operational days after the superintendent's decision. The board shall meet within three operational days and hear the student/staff member's appeal along with the Proposal for Decision and superintendent's decision. Within two business days of the hearing, the board shall render its decision in writing with copies sent to the superintendent, health department official, and parent/guardian or affected person.

ii. Should the superintendent deny the request for rehearing, the appellant may appeal to the local board of education by exercising the process in Subparagraph b.

iii. Review Panel Request for Appeal. If the Proposal for Decision or the superintendent's decision is contrary to the majority opinion of the review panel, a majority of the panel has the right to appeal either decision in the same manner stated in the "Appeal Process."

5. General

a. If the affected student cannot attend school, the LEA will provide an alternative school program.

i. If the public health officer determines there is a risk of infection to an employee through casual contact while

delivering this program, the employee will not be required to provide educational services.

ii. If the public health officer determines there is no risk of infection to the employee, the employee will be expected to participate in the delivery of educational services.

b. The review panel member who is serving as the advocate for the infected individual (or another person designated by the panel and approved by the parent/guardian, or the infected person) will serve as the liaison between the student/staff member, family and attending physician as it relates to the school setting.

c. These procedures in no way limit or supersede the procedural due process requirements established in 29 USC 706(7), R.S. 17:1941, 7946, and 20 USC 1400-1485, et seq.

6. Confidentiality

a. All persons involved in these procedures shall be required to treat all proceedings, deliberations, and documents as confidential information. Records of the proceedings and the decisions will be kept by the superintendent in a sealed envelope with access limited to only those persons receiving the consent of the parent/guardian or infected person as provided in 20 USC 1232(g).

NOTE: See §1121.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(10)(15); R.S. 17:170; R.S. 17:437; R.S. 17:1941; 20 USCS 1232.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§1133. Substance Abuse

A. Any school employee having reasonable cause to believe that a student possesses a controlled dangerous substance or an alcoholic beverage on a school campus shall report such fact to the principal of the school.

1. If a Substance Abuse Prevention Education (SAPE) team exists within the school, the principal shall forward the report to the chairperson of the team.

2. If the report has been given to the team directly or if the report has been forwarded to the team by the principal, the team shall discuss the circumstances of the report with the student reported without disclosing the name of the reporting person and shall meet with the parents of the student reported.

3. The team shall report to the principal of the school and make recommendations for treatment, counseling, or other appropriate action.

B. Any school employee having factual knowledge that a student has manufactured, distributed, or possessed with intent to distribute a controlled dangerous substance shall report such fact to the principal of the school who, upon finding that there is reasonable cause to believe that the student has manufactured, distributed, or possessed with intent to distribute a controlled dangerous substance, shall report such information to the appropriate law enforcement agency.

C. Any person who makes a report in good faith, pursuant to substance abuse, shall have immunity from civil liability that otherwise might be incurred. Such immunity shall extend to testimony in any judicial proceeding resulting from such report.

NOTE: See §1127.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:402 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§1135. Child Abuse

A. Any school employee having reasonable cause to believe that a student has been mentally, physically, or sexually abused shall report these facts to the appropriate authorities.

B. Any person making a report in good faith regarding child abuse shall have immunity from civil liability that may be otherwise incurred.

AUTHORITY NOTE: Promulgated in accordance with R.S. 14:403.3.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§1137. Student Identification Badges

A. Each LEA in any parish having a population of between 120,000 and 130,000 persons may provide for an annual student identification badge to be issued to each student in grades 6 through 12 attending a public school in the school system. The badge shall include the student's name and picture, the name of the school which the student attends, and the calendar year for which it is issued. The student shall display such badge in a prominent manner at all times while on school grounds and when attending any school function, including school-sponsored cocurricular and extracurricular activities, unless circumstances otherwise prevent such display.

B. The LEA shall adopt rules and regulations for the implementation of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:179.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§1139. School Dress Codes

A. Each LEA may adopt such rules and regulations as it deems necessary to require a school dress code that includes the use of uniforms.

B. Each school may select a uniform for its students and display such uniform prior to the beginning of each school year.

C. If an LEA chooses to require a school dress code, it shall notify, in writing, the parent or guardian of each school student of the dress code specifications and their effective date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:416.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§1141. Electronic Telecommunication Devices

A. No student, unless authorized by the school principal or his/her designee, shall use or operate any electronic telecommunication device, including any facsimile system, radio paging service, mobile telephone service, intercom, or electro-mechanical paging system, in any public school building or school grounds or in any school bus.

B. Nothing in this Section shall prohibit the use and operation by any person, including students, of any electronic telecommunication device in the event of an emergency in which there is actual or imminent threat to public safety.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:239.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§1143. Prohibition against the Use of Tobacco

A. No person shall smoke, chew, or otherwise consume any tobacco or tobacco product in any elementary or secondary school building.

B. No person shall smoke or carry a lighted cigar, cigarette, pipe, or any other form of smoking object or device on the grounds of any public or private elementary or secondary school property, except in an area specifically designated as a smoking area.

C. Smoking shall be prohibited on any school bus transporting students attending any public elementary or secondary school.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:240.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

Chapter 13 Discipline

§1301. Disciplinary Regulations

A. Each local educational governing authority shall adopt such rules and regulations as it deems necessary to implement and control any disorderly conduct in the school or on the playground of the school, or on the street or road while going to and from school, or during intermission and recess.

B. Teachers, principals, and administrators may, subject to any rules as may be adopted by the local educational governing authority, apply reasonable disciplinary and corrective measures to maintain order in the schools. (Refer to R.S. 17:416 and R.S. 17:223.)

C. The disciplinary rules (regulations) shall be made known to teachers, parents, and students and shall be reasonably and consistently enforced.

D. Any principal who fails to act on a report of student violations of disciplinary regulations shall explain his/her reasons for such an action to the superintendent of the LEA by which he or she is employed, or to the superintendent's designee.

E. Students, who, through no fault of their parents or guardians or other persons having charge of them, regularly disrupt the orderly processes of the school to which they have been assigned, shall be considered as delinquents and may be reported by the visiting teacher or Supervisor of Child Welfare and Attendance, to the district or family court of the parish having jurisdiction in juvenile matters, there to be dealt with in the manner prescribed by law.

F. Schools shall provide due process prior to suspensions and expulsions.

G. Students who are suspended or expelled shall receive no credit for school work missed while they are suspended or expelled.

H. Each local educational governing authority shall adopt rules regarding the implementation of in-school suspension and detention.

I. Each local educational governing authority shall adopt rules regarding the reporting and review of discipline violations.

J. Each LEA shall establish a discipline policy review committee comprised of sixteen members in accordance with the mandates of R.S. 17:416.8. The LEA shall establish procedures for appointing the two parent members.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:223-224; R.S. 17:416.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§1303. Reasons for Suspensions

A. School principals may suspend from school any student, including an exceptional student, for good cause in accordance with state law and local policy.

B. Students determined to be guilty of the following offenses may be suspended for the following reasons:

1. willful disobedience;
2. disrespect to a teacher, principal, superintendent, and/or member or employee of the local school board;
3. making an unfounded charge against a teacher, principal, superintendent, and/or member or employee of the local school board;
4. using unchaste or profane language;
5. immoral or vicious practices;
6. conduct or habits injurious to his/her associates;
7. using tobacco and/or using and possessing alcoholic beverages or any controlled dangerous substances governed by the Uniformed Controlled Dangerous Substance Law in any form in school buildings or on school grounds;
8. disturbing the school and habitually violating the rules;
9. cutting, defacing, or injuring any part of public school buildings;
10. writing profane or obscene language or drawing obscene pictures in or on any public school premises, or on any fence, sidewalk, or building on the way to or from school;
11. possessing firearms, knives, or other implements that can be used as weapons;
12. throwing missiles on the school grounds;
13. instigating or participating in fights while under school supervision;
14. violating traffic and safety regulations;
15. leaving the school premises without permission or his/her classroom or detention room without permission;
16. habitual tardiness or absenteeism; and
17. committing any other serious offense.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:416.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§1305. Due Process for Suspensions

A. Prior to any suspension, the school principal or the principal's designee shall advise the student in question of the particular misconduct of which he or she is accused as well as the basis for such accusation, and the student shall be given an opportunity at that time to explain his or her version of the facts to the school principal or his or her designee.

B. The principal, or the principal's designee, shall contact by telephone at the telephone number shown on the pupil's registration card or send a certified letter at the address shown on the pupil's registration card to the parent or guardian of the student, giving notice of the suspension, the reasons therefore and establishing a date and time for a conference with the principal or his designee as a requirement for readmitting the student.

1. If the parent or guardian fails to attend the required conference within five school days of mailing the certified letter or other contact with the parent, the truancy laws shall become effective.

2. On not more than one occasion each school year when the parent or guardian refuses to respond, the principal may determine whether readmitting the student is in the best interest of the student.

3. On any subsequent occasions in the same year, the student shall not be readmitted unless the parent, guardian, or other appointed representative responds.

C. A student whose presence in or about a school poses a continued danger to any person or property or an ongoing threat of disruption to the academic process shall be immediately removed from the school premises without the benefit of the procedure described above; however, the necessary procedure shall follow as soon as is practicable.

D. Notice in writing of the suspension and the reasons thereof shall be given to the parent or parents of the suspended student.

E. Any parent, tutor, or legal guardian of a suspended student shall have the right to appeal to the superintendent or to a designee of the superintendent, who shall conduct a hearing on the merits of the case.

F. In all cases of suspensions, the parent, the superintendent of schools, and the visiting teacher and/or Supervisor of Child Welfare and Attendance shall be notified in writing of the facts concerning each suspension, including the reasons therefore and terms thereof.

G. The decision of the superintendent on the merit of the case, as well as the term of suspension, shall be final, reserving the right to the superintendent to remit any portion of the time of suspension.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:416.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§1307. Reasons for Expulsions

A. Students may be expelled for any of the following reasons:

1. any student, after being suspended for committing any of the offenses listed in §1103, may be expelled upon recommendation by the principal of the public school in which the student is enrolled;

2. any student, after being suspended on three occasions for committing any of the offenses listed in §1303 during the same school session, shall, on committing the fourth offense, be expelled from all the public schools of the parish or city school system wherein he or she resides until the beginning of the next regular school year, subject to the review and approval of the local educational governing authority;

3. the conviction of any student of a felony or the incarceration of any student in a juvenile institution for an act which, had it been committed by an adult, would have constituted a felony, may be cause for expulsion of the student for a period of time as determined by the board; such expulsions shall require the vote of two thirds of the elected members of the local educational governing authority;

4. any student found guilty of being in possession of a firearm on school property or on a school bus or at a school sponsored event shall be expelled from school according to the requirements of R.S. 17:416(C)(2);

5. any student found guilty of being in possession of any illegal narcotic, drug, or other controlled substance on school property, on a school bus, or at a school event shall be expelled from school according to the requirements of R.S. 17:416(C)(2).

AUTHORITY NOTE: Promulgated in accordance with R.S.17:416.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§1309. Guidelines for Expulsions

A. No student who has been expelled from any public or nonpublic school outside the state of Louisiana or any nonpublic school within Louisiana for committing any offenses enumerated in R.S. 17:416 shall be admitted to any public school in the state except upon the review and approval by the governing body of the admitting school.

B. No student who has been expelled pursuant to the provisions of R.S. 17:416(C)(2) shall be readmitted to a public school in the school system in which he or she was expelled without the expressed approval of the school board of such school system.

C. Any student who has been expelled from any public or nonpublic school within or outside the state of Louisiana shall provide to any public school or school system in the state to which the student is seeking admission, information on the dates of any expulsion and the reason(s) for which the student was expelled. Additionally, the transfer of a student's records by any public school or school system in the state to any other public or nonpublic school or school system shall include information on the dates of any suspensions or expulsions and the reason or reason(s) for which the student was suspended or expelled. Refer to R.S. 17:416(B)(3).

AUTHORITY NOTE: Promulgated in accordance with R.S.17:416.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§1311. Due Process for Expulsions

A. A recommendation for expulsion is made by the principal.

B. A hearing is conducted by the superintendent of the LEA or someone designated by the superintendent.

C. A determination of whether to expel the student is made by the superintendent or his designee.

D. The principal and teacher as well as the student may be represented by someone of their choice at this hearing.

E. Until the hearing takes place, the student shall remain on suspension.

F. The parent or guardian of the student may, within five days after the decision to expel the student has been rendered, request the local educational governing authority to review the findings of the superintendent or his designee. Otherwise, the decision of the superintendent shall be final.

G. The board, in reviewing the case, may affirm, modify, or reverse the action previously taken.

H. If the board upholds the decision of the superintendent, the parent or guardian of the student may, within 10 days, appeal to the district court for the parish in which the student's school is located. The court may reverse the ruling of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:416.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§1313. Discipline for Students with Disabilities

A. If a school district removes a student with disabilities from the student's current educational placement for 10 school days in a school year, consecutively or cumulatively, regardless of the circumstances, beginning on the eleventh day, all students must be offered education services, including:

1. access to the general curriculum;
2. implementation of the student's IEP;
3. access to statewide test/LEAP 21/GEE 21 preparation and/or remediation equal to those services provided to general education students;
4. services and modifications designed to prevent the behavior from recurring, if the behavior involves drugs, weapons or behavior substantially likely to cause injury to the student or others.

NOTE: Refer to Bulletin 1706 Subpart A-Regulations for Students with Disabilities.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§1315. Corporal Punishment

A. Each LEA shall have discretion in the use of corporal punishment. In those cases in which an LEA decides to use corporal punishment, the LEA shall adopt such rules and regulations as it deems necessary to implement and control any form of corporal punishment in the schools under its jurisdiction.

B. Each LEA shall adopt a policy establishing procedures for the investigation of employees accused of impermissible corporal punishment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:81.6; R.S. 17:223; R.S. 17: 416.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§1317. Search and Seizure

A. Any teacher, principal, school security guard, or administrator in any LEA of the state may search any building, desk, locker, area, or grounds for evidence that the law, a school rule, or parish or city school board policy has been violated.

B. The teacher, principal, school security guard, or administrator may search the person of a student or his personal effects when, based on the attendant circumstances at the time of the search, there are reasonable grounds to suspect that the search will reveal evidence that the student has violated the law, a school rule, or a school board policy. Such a search shall be conducted in a manner that is reasonably related to the purpose of the search and not excessively intrusive in light of the age or sex of the student and the nature of the suspected offense.

C. Each LEA shall adopt a policy to provide for reasonable search and seizure by teachers, by principals, and by other school administrators of a student's person, desk, locker, or other school areas for evidence that the law, a school rule, or an LEA policy has been violated.

D. Any such policy shall be in accordance with applicable law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:416.3.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

Chapter 15 Plant Operations and Maintenance

§1501. Building and Maintenance

A. The school site and building shall include adequate physical facilities and custodial services to meet the needs of the educational program and to safeguard the health and safety of the pupils in each LEA.

B. Sufficient classroom, laboratory, shop, office, storage, and meeting room space shall be provided for the number of students served and the activities conducted in assigned places.

C. Adequate facilities shall be provided for specialized services such as food services, counseling, library, and physical education.

D. School facilities and grounds shall be kept attractive, functional, and clean through regular preventive and corrective maintenance.

E. A site safety officer charged with the supervision of safe practice in storage, use, and distribution of all chemicals shall be designated in each LEA.

F. The LEA must assess the safety of the facilities and equipment in all schools, including the location, quantities, and states of all regulated hazardous substances.

1. A plan to redistribute the unwanted substances must be prepared and kept on file in the central office.

2. Remaining chemicals must be listed on an inventory system.

3. A copy of the inventory must be kept on site in each school, in the central office of each LEA, and at the local fire chief's office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17: 24.5; R.S. 17:151.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§1503. Facility Accessibility

A. Facilities used by LEAs, directly or through contractual arrangement, shall be accessible to and usable by persons with disabilities. Architectural barriers shall not prevent a student with a disability from being educated in the least restrictive educational environment.

B. New facilities or new parts of facilities shall be approved, designed, and constructed under prescribed conditions.

1. They shall not be approved for construction unless and until the DOE and BESE give expressed written approval on the basis of a satisfactory showing by the LEA that adequate provision has been made for the necessary access of the students with disabilities.

2. They shall be designed and constructed in a manner that results in their being readily accessible to and usable by persons with disabilities.

3. They shall be constructed to at least meet the current level of accessibility provided by the Americans with Disabilities Act (ADA) Accessibility Guidelines for Building and Facilities.

C. Facilities that are altered for the use of school districts shall be altered to the maximum extent feasible in a manner that results in the altered portion of the facility being readily accessible to and usable by persons with disabilities.

D. Facilities identifiable as being for students with disabilities and the services and activities provided therein shall meet the same standards and level of quality as do facilities, services, and activities provided to other students.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1731; 20 USCS 1404; 42 USCS 12101 et seq.; 12131et seq.; 12203.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§1505. Program Accessibility

A. Program accessibility for exceptional students shall be ensured within existing facilities and shall be accomplished through either the alteration of existing facilities or nonstructural changes. Such changes shall include:

1. redesign of equipment;
2. assignment of communicative aids;
3. reassignment of classes and other services to accessible buildings;
4. assignment of aides to children;
5. home visits; and
6. delivery of health, welfare, or other social services at alternative accessible sites.

B. A school shall provide programs and activities to exceptional students in the most appropriate integrated setting.

C. Structural changes in facilities shall not need to be made in situations in which other methods effectively ensure accessibility of the program. When structural changes are necessary, they shall be made as expeditiously as possible.

AUTHORITY NOTE: Promulgated in accordance with 20 USCS 1404; 42 USCS 12101 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

Chapter 17 Instructional Support

§1701. Instructional Materials and Equipment

A. Instruction shall be supported with adequate and appropriate instructional materials, equipment, and available community resources that support the stated philosophy and purposes of the school.

B. Instructional materials and equipment shall be in a good state of repair, and provisions shall be made to replace outdated instructional materials and worn-out equipment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6; R.S. 17:7; R.S. 17:351 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§1703. Textbooks

A. Each school shall provide textbook materials for each student and shall have proper procedures for selection, storage, and preservation of textbooks.

B. Each LEA shall make a formal adoption of textbooks within six months from the date of their approval by BESE. Refer to Bulletin 1794 State Textbook Adoption Policy and Procedure Manual (LAC 28:XXXIII).

C. State funds allocated for buying textbooks shall be used to buy books on the state-adopted textbook lists and academically related ancillary materials according to the state guidelines.

1. The annual appropriation for the purchase of instructional materials and supplies (state approved textbooks) is defined in the MFP appropriation bill on a per-pupil amount. In order to facilitate the purchase and receipt of these textbooks each year, LEAs are required to submit state textbook orders to the Publisher's Depository, centrally located within the state, between March 15 and May 15.

2. Waivers. LEAs may use state textbook dollars for the purchase of non-adopted instructional materials when:

a. they are purchasing instructional materials for grades K-3 that are manipulative concrete materials or gross motor materials;

b. they do not exceed 10 percent of the total state textbook allocation; and

c. with the approval of their local educational governing authority, they petition in writing the DOE for permission to spend in excess of the 10 percent allowance.

D. Refer to §711 for more policies related to textbooks.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:8, R.S. 17:351 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§1705. School Libraries/Media Centers

A. The library/media center holdings shall reflect the philosophy and purposes of the school, relate directly to the educational program and the teaching techniques used by the teaching staff, and provide an opportunity to explore beyond the sphere of the regular instructional program.

B. The library/media center shall be the major instructional resource center of the school and shall offer varied services and activities for students.

C. Facilities, adequate in size, shall be provided to implement school-wide media services.

D. Available funds shall be expended to ensure a balanced and current library collection that includes the number of volumes and types of resources outlined in the Guidelines for Library Media Programs in Louisiana Schools.

E. Each school shall have in its library center a collection of print and nonprint media and equipment in sufficient number and quality to meet the instructional needs of teachers and students. Refer to Guidelines for Library Media Programs in Louisiana Schools.

F. Each school shall have library or media services appropriate to the instructional levels and exceptionalities of its students. Elementary schools that do not have a centralized library shall have classroom collections. Refer to Guidelines for Library Media Programs in Louisiana Schools.

G. The use of funds for library services for exceptional students shall be at least proportionate to that expended for regular students.

H. Each secondary school shall have a library and shall have librarian(s) as follows.

Student Enrollment	Required Librarians
299 or fewer	One half-time
300-999	One full-time
1000 or higher	Two full-time

NOTE: Refer to Guidelines for Library Media Programs in Louisiana Schools for recommended staffing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:351 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§1707. Disposal of Library Books and Textbooks.

A. An LEA may sell any textbooks or library books no longer in use in the school system to any person or entity for private use at a fee established by the LEA. Funds derived from such sale shall be used by the LEA solely for textbook or library book purchases.

B. If a textbook or library book has been out of use for over six months or upon replacement by a new edition of any such book, an LEA may donate said book to any public hospital, any jail or prison, or any public institution, or to any individual for private use, free of charge.

C. Any textbook or library book which an LEA is unable to sell or donate after being out of use in excess of six months or upon replacement by a new edition of any such book, or any textbook or library book which is deemed by the LEA to be unusable or unsalable, shall be disposed of in an appropriate manner.

D. The reproduction of any textbook or library book no longer in use by an LEA and the use of multiple copies of such books by organized groups or by any educational agency or entity is prohibited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:8.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§1709. Internet Use

A. Each LEA shall adopt policies, in accordance with all applicable state and federal laws, regarding access by students and employees to Internet and online sites that contain or make reference to harmful material, the character of which is such that it is reasonably believed to be obscene, child pornography, conducive to the creation of a hostile or dangerous school environment, pervasively vulgar, excessively violent, or sexually harassing in the school environment.

1. Such policies shall include, but not be limited to prohibitions against accessing sites containing information on the manufacturing or production of bombs or other incendiary devices.

B. Any policies adopted by the LEA shall include the use of computer-related technology or the use of Internet service provider technology designed to block access or exposure to any harmful material as specified in this Section, or both.

C. The provisions of this Section shall not prohibit any authorized employee or student from having unfiltered or unrestricted access to the Internet or an online service for legitimate scientific or educational purposes as determined and approved by the LEA, or from having unfiltered or unrestricted access to the Internet or online services of a newspaper with a daily circulation of at least 1000.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:100.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

Chapter 19 Community Relations

§1901. School-Community Relations Program

A. The school-community relations program shall be such that the community is fully informed about the educational program, the strengths and needs of the school, and the services available to the school community.

B. The LEA shall regularly assess community needs and shall conduct public relations activities.

C. Each school shall maintain a continuous and specific program of community relations that involves the professional staff, the students, and citizens.

D. Each school shall use its community resources in planning and conducting the total school program.

E. Each school shall seek to enlist the cooperative assistance of all communications media within the

community and to provide access to public information about the school, its policies, and activities.

F. Teachers shall make appropriate and effective use of community resources.

G. Parental involvement and support shall be sought through communication between school and home.

H. Each school shall develop a written plan for community/parental involvement.

I. Each LEA shall establish local advisory councils as required by federal, state, and local guidelines.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:251; R.S. 17:406.1 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§1903. Parental Involvement

A. Each LEA shall take whatever action is necessary to ensure parental participation as required by federal, state, and local guidelines in the development of the IEP for exceptional students.

B. Communication from the school to the parent shall be as follows:

1. written;
2. in language understandable to the general public;
3. in the native language of the parent or other mode of communication used by the parent when possible; and/or
4. communicated orally (when necessary) in the native language or other mode of communication so that the parent understands the content of such communication.

C. Full and effective notice communicated from the LEA to the parent of an exceptional student or a student thought to be exceptional shall also include the following:

1. a full explanation of all the procedural safeguards available to the parents, including confidentiality requirements;
2. a description of the proposed (or refused) action, an explanation of the reasons for such actions, and a description of any options that were considered and rejected;
3. a description of each evaluation procedure, type of test, record or report used as a basis for the action, and any other relevant factors; and
4. identification of the employee or employees of the school system who may be contacted.

AUTHORITY NOTE: Promulgated in accordance with; R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

Chapter 21 Support Services

§2101. Transportation

A. The transportation program shall be safe, adequate, and suitable to the needs of the students and the community served while complying with the standards of the DOE. Refer to Bulletin 1191 School Transportation Handbook, and applicable laws.

B. Transportation to and from school shall be provided to eligible students under the following conditions:

1. when the student resides more than 1 mile from the school of attendance;
2. with the approval of BESE, when the student resides within 1 mile of the school of attendance if there are exceptional (hazardous) walking situations; and
3. as provided in R.S. 17:158 (A).

C. If transportation is not provided by the LEA, parents of students attending public and nonpublic schools shall be

reimbursed for transportation costs according to state guidelines, provided funds are appropriated by the legislature.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§2103. School Food Service

A. A recognized school of high school grade or under shall be eligible to participate in the school food service programs administered by the DOE, provided that requirements set forth in the agreements with the local educational governing authority are met.

B. Reimbursement payment shall be made only to schools operating under an agreement between the LEA and the DOE.

1. Agreements shall be signed by the designated representative of each LEA. Agreements shall be renewed by an annual submission of an application for participation, unless an amendment is necessary.

2. These agreements may be terminated by either party or may be canceled at any time by the DOE upon evidence that terms of agreements have not been fully met.

C. Participating schools shall adhere to conditions of Agreement as stipulated in Bulletin 1196 Louisiana Food and Nutrition Programs Policies of Operation, Revised.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17: 82; R.S. 17: 191 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

Chapter 23 Curriculum and Instruction

§2301. Standards and Curriculum

A. Each LEA shall adopt and implement local curricula aligned with state content standards, benchmarks, and grade-level expectations. The state documents are:

1. English Language Arts Standards, Bulletin 1965;
2. Mathematics Framework, Bulletin 1955;
3. Science Framework, Bulletin 1962;
4. Social Studies Content Standards, Bulletin 1964;
5. Foreign Language Content Standards, Bulletin 1966;
6. Arts Content Standards, Bulletin 1963;
7. Physical Education Content Standards, Bulletin 102;
8. Health Education Content Standards, Bulletin 103;
9. K-12 Educational Technology Standards, Bulletin 104;
10. Standards for Serving Four-Year-Old Children, Bulletin 105;
11. Agricultural Education Content Standards, Bulletin 106;
12. Health Occupations Content Standards, Bulletin 107;
13. Marketing Education Content Standards, Bulletin 108;
14. Family and Consumer Science Content Standards, Bulletin 109;
15. Technology Education Content Standards, Bulletin 110;
16. Business Education Content Standards, Bulletin 1977;
17. Trade and Industrial Arts Content Standards, Bulletin 114.

B. Each teacher of required subjects shall provide instruction that includes those skills and competencies designated by local curricula that are based upon the state's content standards, benchmarks, grade-level expectations, and Career and Technical Education Model Course Guidelines.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17: 24.4; R.S. 17:154.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§2303. Planning and Instruction

A. Course content shall meet state and local guidelines relative to unbiased treatment of race, sex, roles, religions, ethnic origins, and political beliefs.

B. Each school's instructional program shall be characterized by well-defined instructional objectives and systematic planning by teachers.

C. Planning by teachers for content, classroom instruction, and local assessment shall reflect the use of local curricula and the state's content standards, benchmarks, grade-level expectations, and Career and Technical Education Model Course Guidelines.

D. The instructional program shall reflect the selection and use of varied types of learning materials and experiences, and the adaptation of organizational and instructional procedures to provide for individual student needs.

E. The instructional program shall reflect the use of varied evaluative instruments and procedures.

F. Teaching strategies and techniques shall be adjusted to accommodate the types of learners served and their individual learning styles.

G. Each school's educational program shall provide for individual differences of students.

AUTHORITY NOTE: Promulgated in accordance with Louisiana Constitution Art. VIII Preamble.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§2305. Ancillary Areas of Instruction

A. Each LEA shall develop a character education philosophy and implementation plan consistent with its locally developed curriculum.

B. A public school may offer instruction in personal financial management based upon the concept of achieving financial literacy through the teaching of personal management skills and the basic principals involved with earning, spending, saving, and investing. Such instruction and subject matter shall be integrated into an existing course of study.

C. A public high school shall offer an elective course in American Sign Language, provided that at least 15 students in a school request the course and a certified teacher is available.

D. Any public school in Louisiana may offer instruction in sex education, provided such instruction and subject matter is integrated into an existing course of study such as biology, science, physical hygiene, or physical education.

1. Such instruction should encourage sexual abstinence outside of marriage, and such instruction shall not include religious beliefs, practices in human sexuality, nor the subjective moral and ethical judgments of the instructor or other persons.

2. No such instruction shall be offered in kindergarten or in grades one through six, except that the Orleans Parish School Board may offer instruction in sex education at the third grade level or higher.

3. When offered, such instruction shall be available also to special education students at age-appropriate levels.

4. Any student may be excused from receiving instruction in sex education at the option and discretion of his or her parent or guardian according to procedures provided by the LEA. Such instruction may be offered at times other than during the regular school day, as determined by the LEA.

5. An LEA that chooses to offer instruction in sex education shall provide the following information to the parents and/or guardians of the students:

- a. a description of the course contents;
- b. a listing of course materials to be used; and
- c. the qualifications of the instructor(s).

E. All books, films, and other materials to be used in instruction in sex education shall be submitted to and approved by the local educational governing authority and by a parental review committee, whose membership shall be determined by such board.

F. Each LEA shall include in the curriculum a program of substance abuse prevention, to include informational, effective, and counseling strategies, and information designed to reduce the likelihood that students shall injure themselves or others through the misuse and abuse of chemical substances.

1. The substance abuse programs and curricula shall also include procedures for identifying students who exhibit signs of misuse or abuse of such substances and procedures for referral for counseling or treatment.

2. Elementary schools shall provide a minimum of 16 contact hours of substance abuse prevention education each school year. Instruction shall be provided within a comprehensive school health program and in accordance with the state substance abuse curriculum (Bulletin 1864) or through substance abuse programs approved by BESE.

3. Secondary schools shall provide a minimum of eight contact hours of substance abuse prevention education each school year for grades 10-12 and 16 hours for grade 9. Instruction shall be provided within a comprehensive school health program and in accordance with the state substance abuse curriculum (Bulletin 1864) or through substance abuse programs approved by the BESE.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:154; R.S. 17:261 et seq.; R.S. 17:281 et seq.; R.S. 17:405 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§2307. Assessment

A. Assessment of student performance shall be conducted in each course or instructional level, and mastery of concepts and skills shall be verified.

B. Provisions shall be made for regular assessment of students, and test interpretation and consultation services shall be provided to students, parents, teachers, and administrators.

NOTE: Refer to §705(C).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§2309. Curriculum for Exceptional Students

A. Schools and LEAs shall require the development of an IEP including educational placement for each student determined to be exceptional and in need of special education and related services.

B. Each school and LEA shall include on each IEP all special education and related services necessary to accomplish comparability of educational opportunity between exceptional students and students who are not exceptional.

C. Special education students shall be allowed to earn Carnegie units when possible.

1. The integrity of the Carnegie unit shall not be diminished by any special education program(s).

2. The Carnegie units shall be granted by regular or special education teachers certified in the subject matter areas which they are teaching.

NOTE: Refer to Bulletin 1706, Regulations for Implementation of the Exceptional Children's Act Bulletin 1508, Pupil Appraisal Handbook, and Bulletin 1503, I.E.P. Handbook

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§2311. Curriculum for Gifted

A. Differentiated curricula shall be developed to meet the needs of the gifted student. Differentiated curricula shall contain the following:

1. content that is compact and accelerated in such a way that the amount of time usually involved in mastery is significantly reduced;

2. content that reflects a higher degree of complexity, emphasizes abstract concepts, and develops higher-level thinking processes than is found in regular course work;

3. content that goes beyond the prescribed curriculum to involve the application of learning to areas of greater challenge; and

4. multi-disciplinary content that increases student's abilities to formulate and test new generalizations and/or products.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§2313. Elementary Program of Studies

A. Elementary schools shall adhere to the curricular and time requirements established by the DOE and approved by BESE.

B. Schools and LEAs providing prekindergarten programs shall offer a curriculum that is developmentally appropriate and informal in nature.

NOTE: Refer to Bulletin 105, Louisiana Standards for Serving Four-Year-Old Children.

1. The following suggested minimum time requirements for prekindergarten shall be flexibly scheduled to meet the developmental needs of young students.

Teacher-directed activities (whole or small group)	35%
Student-initiated activities (learning center)	35%
Lunch	
Snack and Restroom time	10%
Rest period and/or quiet activities	20%

2. Prekindergarten programs for exceptional students shall offer a curriculum:

- a. that is developmentally sequenced based on reliable research;
- b. that offers a plan for continuous evaluation; and
- c. that offers balanced experiences in pre-academic/academic skills, communication skills, social-emotional skills, self-help skills and motor skills, in accordance with an IEP.

C. The kindergarten shall be informal in nature with teacher-directed and student-initiated activities; it shall be planned to meet the developmental needs of young students.

1. The following minimum time requirements shall be flexibly scheduled to meet the developmental needs of young students.

Teacher directed activities (indoor and outdoor whole and small group)	40%
Child initiated activities (indoor and outdoor learning centers)	35%
Lunch	
Snack and restroom time	10%
Rest Periods	15%

D. Elementary Minimum Time Requirements

1. The elementary grades shall provide a foundation in fundamentals of the language arts, mathematics, social studies, science, health, physical education, and cultural arts.

2. Each grade level, grades one through eight, shall teach the following content subject areas, ensuring strict adherence to the Louisiana Content Standards and grade-level expectations, and locally developed curricula.

3. Elementary schools shall offer an articulated foreign language program for 30 minutes daily in grades four through six, and 150 minutes per week in grades seven and eight.

NOTE: Refer to A Guide for Administrators of Elementary Level Second Language and Immersion Programs in Louisiana Schools.

a. If an LEA does not have a program for foreign language instruction in grades 1-12, a program shall be required upon presentation of a petition requesting the instruction of a particular foreign language. The superintendent of the LEA shall determine the required number of signatures needed.

b. For identified special education students, the IEP Committee shall determine the student's eligibility to receive foreign language instruction.

E. Each public elementary school that includes any of the grades kindergarten through six shall provide at least 30 minutes of quality, moderate to vigorous, organized physical activity each day for all students.

1. No later than September 1 of each year, each elementary school shall report to its school board on compliance with this requirement.

2. The LEA shall report to BESE on compliance no later than October 1.

F. The following are suggested and required minimum minutes for elementary grades.

Grades 1, 2, and 3	
	Suggested Minimum Minutes Per Week
English Language Arts	825
Mathematics	300
Science and Social Studies	225
Foreign Language	150
	Required Minimum Minutes Per Week
Physical Education	150
Health, Music, Arts and Crafts	150

Grades 4, 5, and 6	
	Suggested Minimum Minutes Per Week
English Language Arts	600
Mathematics	300
Science	225
Social Studies	225
Foreign Language	150
	Required Minimum Minutes Per Week
Physical Education	150
Health, Music, Arts and Crafts	150

Grades 7 and 8 (Six Period Day Option)	
	Suggested Minimum Minutes Per Week
English Language Arts	550
Mathematics	275
Science	275
Social Studies Grade 7 American Studies Grade 8 Louisiana Studies	275
Foreign Language	150
	Required Minimum Minutes Per Week
Physical Education	150
Health, Music, Arts and Crafts	125
Grades 7 and 8 (Seven Period Day Option)	
	Suggested Minimum Minutes Per Week
English Language Arts	500
Mathematics	250
Science	250
Social Studies Grade 7 American Studies Grade 8 Louisiana Studies	250
Foreign Language	150
	Required Minimum Minutes Per Week
Physical Education	150
Health, Music, Arts and Crafts	250

1. It is strongly recommended that teachers integrate reading (skills and comprehension) throughout all content areas.

2. For students in grades 1 through 4 who have been identified as reading below grade level, the minimum time requirements in health, music, and arts and crafts are suggested in lieu of required.

3. For students in grades 5-8 who have scored below the Basic level on LEAP 21 in English language arts or

mathematics, the minimum time requirements in health, music, arts and crafts, or electives are suggested in lieu of required.

4. English as a Second Language may be offered as a part of English language arts.

5. For students with specific needs, teachers may increase the weekly time in English language arts or mathematics by reducing instructional time in other subjects, subject to the review and approval of the principal.

6. Grade 6 may adhere to the same schedule as grades seven and eight only in organizational patterns that include grades seven and eight.

7. Grades 7 and 8 (and grade 6 when grouped with grades 7 and 8) may offer electives from the following.

Mathematics	Exploratory Agriscience
Reading	Exploratory Family and Consumer Sciences
Writing	Exploratory Keyboarding
Science	
Social Studies	Exploratory Technology Education:
Art	Communication/Middle School
Speech	Modular Technology/Middle School
Instrumental or Vocal Music	Construction/Middle School
Foreign Languages	Manufacturing Technology/Middle School
Computer/ Technology Education	Transportation Technology/Middle School

a. In Exploratory Technology Education, the minimum time for any cluster is six weeks. The maximum time allowed in a cluster is 36 weeks. All areas in each cluster should be taught.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:17.1; R.S. 17: 24.8; R.S. 17:154-154.1; R.S. 17:261 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§2315. Adding Electives to the Program of Studies- Middle and Secondary

A. An LEA choosing to add an elective course to its program of studies shall establish a policy and procedures for reviewing and approving courses that meet the following Standards for Locally Initiated Electives.

1. Locally initiated electives shall support the standards-based initiatives and shall include the key components addressed in the content standards documents.

2. Electives shall support the mission of the standards-based initiatives: "to develop rigorous and challenging standards that will enable all Louisiana students to become lifelong learners and productive citizens for the 21st century."

3. Electives shall incorporate the Foundation Skills of the State Content Standards (Communication, Problem-Solving, Resource Access and Utilization, Linking and Generating Knowledge, and Citizenship).

4. Electives shall expand, enhance, and/or refine the Mathematics, Science, Social Studies, English/Language Arts, Foreign Languages, Arts, Agricultural Education, and Business Education Standards and grade-level expectations and those standards approved by BESE for other content areas.

5. Electives shall comply with all policies set forth by BESE as stated in this bulletin.

6. An LEA shall develop a process for approving elective courses. This process shall ensure alignment with

the standards-based initiatives, compliance with current BESE policy, and all laws and regulations pertaining to students with disabilities.

a. Electives shall enhance, expand, and/or refine the core curriculum. Elective courses shall not replace, duplicate, or significantly overlap the content of core curriculum or other approved electives.

b. Electives shall meet specific curricular goals of the districts.

c. Electives shall include challenging content that require students to extend the knowledge and skills acquired through the core curriculum.

d. Electives shall provide a variety of activities and hands-on learning experiences that accommodate different learning styles.

e. Electives shall include appropriate accommodations for addressing specific instructional and assessment needs of students with disabilities, students who are linguistically and/or culturally diverse, and students who are gifted and talented.

f. Electives shall incorporate assessment strategies that support statewide assessments.

7. Each LEA shall maintain records of all approved electives and shall submit annual reports to the department.

a. All approved electives shall be submitted electronically to the DOE 30 days prior to their implementation.

b. Each LEA shall submit a statement of assurance that approved electives meet State Standards for Locally Initiated Electives as established by BESE.

c. Each LEA shall maintain records of electives that include a rationale for the course, a detailed content outline, certification of the instructor, Carnegie unit credit, prerequisites for the course, a plan for assessing students, a plan for assessing the course, and the dates of implementation.

8. Each LEA shall ensure that electives in the core content areas of English, mathematics, science, social studies, foreign language and art are taught by teachers meeting the highly qualified requirements with regard to NCLB (No Child Left Behind).

9. Electives shall comply with all state and federal constitutional, statutory, and regulatory guidelines and requirements.

a. Each LEA shall be responsible for seeking legal counsel to ensure that elective course content meets the standards set herein.

10. BESE reserves the authority to require LEAs to submit documentation regarding the course content, approval process and/or course evaluation of any approved elective. BESE further reserves the right to rescind local authority to approve electives for an LEA not in compliance with Standards for Locally Initiated Electives.

B. Elective courses designed specifically for special education students shall also be approved by the Division of Special Populations.

C. The DOE will provide BESE with a listing of any new electives.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:281 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§2317. High Schools

A. High schools shall adhere to the curricular and time requirements established by the DOE and approved by BESE.

B. Exceptional students shall be afforded meaningful opportunities to participate in all areas of study as determined by the IEP Team during the development of the IEP.

C. The basic unit of credit shall be the Carnegie unit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:154; R.S. 17:1944; R.S. 17:1945.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§2319. High School Graduation Requirements

A. Standard Diploma

1. The 23 units required for graduation shall include 15 required units and 8 elective units; the elective units can be earned at technical colleges as provided in §2389.

B. In addition to completing a minimum of 23 Carnegie credits, students must pass the English language arts and mathematics components of the GEE 21 and either the science or social studies portions of GEE 21 to earn a standard high school diploma.

1. The English language arts and mathematics components of GEE 21 shall first be administered to students in the 10th grade.

2. The science and social studies components of the graduation test shall first be administered to students in the 11th grade.

3. Remediation and retake opportunities will be provided for students that do not pass the test. Students shall be offered 50 hours of remediation each year in each content area they do not pass. Refer to Bulletin 1566C Guidelines for Pupil Progression, and the addendum to Bulletin 1566C Regulations for the Implementation of Remedial Education Programs Related to the LEAP/CRT Program, Regular School Year.

4. Students may apply a maximum of two Carnegie units of elective credit toward high school graduation by successfully completing specially designed courses for remediation.

a. A maximum of one Carnegie unit of elective credit may be applied toward meeting high school graduation requirements by an eighth grade student who has scored at the Unsatisfactory achievement level on either the English language arts and/or the mathematics component(s) of the eighth grade LEAP 21 provided the student:

- i. successfully completed specially designed elective(s) for LEAP 21 remediation;
- ii. scored at or above the basic achievement level on those component(s) of the eighth grade LEAP 21 for which the student previously scored at the Unsatisfactory achievement level.

C. Prior to or upon the student's entering the tenth grade, all LEAs shall notify each student and his/her parents or guardians of the requirement of passing GEE 21.

1. Upon their entering a school system, students transferring to any high school of an LEA shall be notified by that system of the requirement of passing GEE 21.

D. The Certificate of Achievement is an exit document issued to a student with a disability after he or she has achieved certain competencies and has met certain

conditions. Refer to Bulletin 1706C Regulations for the Implementation of the Children with Exceptionalities Act.

E. Minimum Course Requirements for High School Graduation

English	4 units
Shall be English I, II, and III, in consecutive order; and English IV or Business English.	
Mathematics	3 units
(Effective for incoming freshmen 2005-2006 and beyond.) All students must complete one of the following:	
<ul style="list-style-type: none"> • Algebra I (1 unit) or • Algebra I-Pt. 1 and Algebra I-Pt. 2 (2 units) or • Integrated Mathematics I (1 unit) 	
The remaining unit(s) shall come from the following: Integrated Mathematics II, Integrated Mathematics III, Geometry, Algebra II, Financial Mathematics, Advanced Mathematics I, Advanced Mathematics II, Pre-Calculus, Calculus, Probability and Statistics, and Discrete Mathematics.	
(Effective for incoming freshmen 1997-98 through 2004-2005) Shall be selected from the following courses and may include a maximum of 2 entry level courses (designated by E): Introductory Algebra/Geometry (E), Algebra I-Part 1 (E), Algebra I-Part 2, Integrated Mathematics I (E), Integrated Mathematics II, Integrated Mathematics III, Applied Mathematics I (E), Applied Mathematics II, Applied Mathematics III, Algebra I (E), Geometry, Algebra II, Financial Mathematics, Advanced Mathematics I, Advanced Mathematics II, Pre-Calculus, Calculus, Probability and Statistics, and Discrete Mathematics	
Science	3 units
Shall be the following: 1 unit of Biology 1 unit from the following physical science cluster: Physical Science, Integrated Science, Chemistry I, Physics I, Physics of Technology I 1 unit from the following courses: Aerospace Science, Biology II, Chemistry II, Earth Science, Environmental Science, Physics II, Physics of Technology II, Agriscience II, an additional course from the physical science cluster, or a locally initiated science elective.	
<ul style="list-style-type: none"> • Students may not take both Integrated Science and Physical Science • Agriscience I is a prerequisite for Agriscience II and is an elective course. 	
Social Studies	3 units
Shall be American History, one-half unit of Civics, one-half unit of Free Enterprise; and one of the following: World History, World Geography, or Western Civilization	
Health Education	1/2 unit
Physical Education	1 1/2 units
Shall be Physical Education I and Physical Education II, or Adapted Physical Education for eligible special education students. A maximum of four units of Physical Education may be used toward graduation. NOTE: The substitution of JROTC is permissible.	
Electives	8 units
TOTAL	23 units

F. High School Area of Concentration

1. All high schools shall provide students the opportunity to complete an area of concentration with an academic focus and/or a career focus.

a. To complete an academic area of concentration, students shall meet the current course requirements for the Tuition Opportunity Program for Students (TOPS) Opportunity Award plus one additional Carnegie unit in mathematics, science, or social studies.

b. To complete a career area of concentration, students shall meet the minimum requirements for graduation including four elective primary credits in the area of concentration and two related elective credits, including

one computer/technology course. The following computer/technology courses can be used to meet this requirement.

Course	Credit
Computer/Technology Literacy	1
Computer Applications or Business Computer Applications	1
Computer Architecture	1
Computer Science I, II	1 each
Computer Systems and Networking I, II	1 each
Desktop Publishing	1
Digital Graphics and Animation	1/2
Multimedia Presentations	1/2 or 1
Web Mastering or Web Design	1/2
Independent Study in Technology Applications	1
Word Processing	1
Telecommunications	1/2
Introduction to Business Computer Applications	1
Technology Education Computer Applications	1
Advanced Technical Drafting	1
Computer Electronics I, II	1 each

G. Academic Endorsement

1. Graduating seniors in 2005 and thereafter who meet the requirements for a standard diploma and satisfy the following performance indicators shall be eligible for an academic endorsement to the standard diploma:

a. Students shall complete the academic area of concentration.

b. Students shall pass all four components of GEE 21 with a score of basic or above, or one of the following combinations of scores with the English language arts score at basic or above:

i. one approaching basic, one mastery or advanced, basic or above in the remaining two; or

ii. two approaching basic, two mastery or above.

c. Students shall complete one of the following requirements:

i. senior project;

ii. one carnegie unit in an AP course with a score of three or higher on the AP exam;

iii. one carnegie unit in an IB course with a score of four or higher on the IB exam; or

iv. three college hours of non-remedial, articulated credit in mathematics, social studies, science, foreign language, or English language arts.

d. Students shall meet the current minimum grade-point average requirement for the TOPS Opportunity Award.

e. Students shall achieve an ACT Composite Score of at least 23.

H. Career/Technical Endorsement

1. Graduating seniors in 2005 and thereafter who meet the requirements for a standard diploma and satisfy the following performance indicators shall be eligible for a career/technical endorsement to the standard diploma:

a. Students shall meet the current course requirements for the TOPS Opportunity Award or the TOPS Tech Award.

b. Students shall complete the career area of concentration.

c. Students shall pass the English language arts, mathematics, science, and social studies components of the GEE 21 at the Approaching Basic level or above.

d. Students shall complete a minimum of 90 work hours of work-based learning experience (as defined in the DOE Diploma Endorsement Guidebook) and complete one of the following requirements:

i. industry-based certification from the list of industry-based certifications approved by BESE; or

ii. three college hours in a career/technical area that articulate to a postsecondary institution, either by actually obtaining the credits and/or being waived from having to take such hours.

e. Students shall meet the current minimum grade-point average requirement for the TOPS Opportunity Award or the TOPS Tech Award.

f. Students shall achieve the current minimum ACT Composite Score (or SAT Equivalent) for the TOPS Opportunity Award or the TOPS Tech Award.

I. A Louisiana state high school diploma cannot be denied to a student who meets the state minimum high school graduation requirements; however, in those instances in which BESE authorizes an LEA to impose more stringent academic requirements, a school system diploma may be denied.

J. Each school shall follow established procedures for special requirements for high school graduation to allow each to address individual differences of all students.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4; R. S. 17:183.2; R.S. 17: 395.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§2321. Carnegie Credit for Middle School Students

A. Students in the middle grades are eligible to receive Carnegie credit for courses in the high school Program of Studies in mathematics, science, English, social studies, foreign language, keyboarding/keyboarding applications, or computer/technology literacy, provided that they have demonstrated mastery of the middle school content standards and grade-level expectations in the content area.

B. 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.

C. The LEA may grant credit on either a letter grade or a Pass or Fail (P/F) basis, provided there is consistency system-wide.

D. The eighth grade LEAP 21 shall be administered in lieu of a required credit exam for students who:

1. scored unsatisfactory on the mathematics or English language arts components of eighth grade LEAP 21; and

2. successfully complete a specially designed elective for eighth grade LEAP 21 remediation;

3. students meeting the above criteria who score at or above the basic achievement level upon retaking eighth grade LEAP 21 may earn a maximum of one Carnegie unit of elective credit.

E. Students who are repeating the eighth grade because they have failed both the mathematics and English language arts components of LEAP 21 shall not take or receive Carnegie credit for any high school courses other than the required eighth grade remediation courses provided all requirements are met.

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:

§2323. Proficiency Examinations

A. High school credit shall be granted to a student following the student's passing of a proficiency examination for the eligible course.

B. A proficiency examination shall be made available to a student when a school official believes that a student has mastered eligible subject matter and has reached the same or a higher degree of proficiency as that of a student who successfully completed an equivalent course at the regular high school or college level.

1. The testing instrument and the passing score shall be submitted for approval to the Division of Student Standards and Assessments of the DOE.

2. The course title, year taken, P/F (Pass or Fail) and unit of credit earned shall be entered on the Certificate of High School Credits (transcript). MPS (Minimum Proficiency Standards) must be indicated in the remarks column.

C. Students shall not be allowed to take proficiency examinations in courses previously completed, either successfully or unsuccessfully, in high school or at a level below that which they have completed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4; R.S. 17:391.3.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§2325. Advanced Placement and Military Service Credit

A. High school credit shall be granted to a student successfully completing an Advanced Placement course or a course designated as Advanced Placement, regardless of his test score on the examination provided by the College Board.

1. Procedures established by the College Board must be followed.

2. Courses listed in the Program of Studies may be designated as Advanced Placement courses on the student's transcript by following procedures established by the DOE.

B. Two units of elective credit toward high school graduation shall be awarded to any member of the United States Armed Forces, their reserve components, the National Guard, or any honorably discharged veteran who has completed his/her basic training, upon presentation of a military record attesting to such completion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§2327. High School Credit for College Courses

A. The following policies apply to students attending colleges or other post secondary institution on a part time basis.

B. The principal of the high school shall approve in advance the course to be pursued by the student in college.

C. The student shall meet the entrance requirements established by the college.

D. The principal of the high school shall verify that the contents of the college course meet the standards and grade-level expectations of the high school course for which the student is receiving credit.

E. The student shall earn at least two or three college hours of credit per semester. A course consisting of at least two college hours shall be counted as no more than one unit of credit toward high school graduation.

F. The high school administrator shall establish a procedure with the college to receive reports of the student's class attendance and performance at six- or nine-week intervals.

G. College courses shall be counted as high school subjects for students to meet eligibility requirements to participate in extra-curricular activities governed by voluntary state organizations.

H. Students may participate in college courses and special programs during regular or summer sessions.

I. For gifted students, entry into a college course for credit shall be stated in the student's IEP.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§2329. Early College Admissions Policy

A. High school students of high ability may be admitted to a college on a full-time basis.

B. A student shall have maintained a "B" or better average on all work pursued during three years (six semesters) of high school.

C. The student shall have earned a minimum composite score of 25 on the ACT or an SAT score of 1050; this score must be submitted to the college.

D. A student shall be recommended by his high school principal.

E. Upon earning a minimum of 24 semester hours at the college level, the student shall be eligible to receive a high school diploma.

1. The high school principal shall submit to the DOE the following:

a. forms provided by the DOE and completed by the college registrar certifying that the student has earned 24 semester hours of college credit; and

b. a Certificate of High School Credits.

F. A student not regularly enrolled in the current school year in the high school shall be automatically eliminated from participation in all high school activities, with the exception of high school graduation ceremonies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:183.5.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§2331. High School Program of Studies

A. The high school shall provide a comprehensive, college preparatory, and/or career and technical education curriculum.

B. Each LEA shall adopt a written policy pertaining to the awarding of 1/2 unit of Carnegie credit for all one unit courses listed in the academic and career/technical education course offerings. This policy shall be included in the Pupil Progression Plan of the LEA.

C. One-half unit of credit may be awarded by the school for all one-unit courses, in accordance with the LEA policy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4; R.S. 17:81; R.S. 17:183.5.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§2333. Art

A. Art course offerings shall be as follows.

Course Title(s)	Units
Art I, II, III, IV	1 each

B. Art I is a prerequisite to Art II and Art III.

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:

§2335. Computer/Technology Education

A. Computer/technology course offerings shall be as follows.

Course Title(s)	Units
Computer Applications	1
Computer Architecture	1
Computer Science I	1
Computer Science II	1
Computer Systems and Networking I	1
Computer Systems and Networking II	1
Computer/Technology Literacy	1
Desktop Publishing	1
Digital Graphics and Animation	1/2
Multimedia Productions	1/2 or 1
Web Mastering	1/2
Independent Study in Technology Application	1

B. Computer Science certification is required to teach Computer Science I and II. Teachers who are identified to teach one of the other Computer Education course offerings at the high school level must hold a valid Louisiana Secondary Certificate in any area and demonstrate sufficient technology proficiencies to teach the course. The district and school shall ensure that teachers have appropriated and demonstrated technology knowledge and skills to teach the 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:

§2337. Dance

A. Dance course offerings shall be as follows.

Course Title(s)	Units
Dance I	1
Advanced Dance	1

B. Advanced Dance is a performance class with new literature each year; it may be repeated more than once.

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:

§2339. Driver Education

A. Driver education course offerings shall be as follows.

Course Title(s)	Units
Driver Education and Traffic Safety	1/2

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4; R.S. 17:270-271.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§2341. English

A. Four units of English shall be required for graduation. They shall be English I, II, and III, in consecutive order, and English IV or Business English.

B. Students who score at the *Unsatisfactory* achievement level on the English language arts component of grade eight LEAP 21 shall pass a high school remedial course in that content area before enrolling any English course in the Secondary Program of Studies for English meeting graduation requirements.

C. The English course offerings shall be as follows.

Course Title(s)	Units
English I, II, III, and IV	1 each
Business English	1
Reading I	1
Reading II	1
English as a Second Language (ESL) I, II, III, and IV	1 each

D. Only students who have limited English proficiency are permitted to enroll in English as a Second Language (ESL) 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:

§2343. Fine Arts

A. The Fine Arts course offerings shall be as follows.

Course Title(s)	Units
Fine Arts Survey	1

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§2345. Foreign Languages

A. The foreign language course offerings shall be as follows.

Course Title(s)	Units
French I, II, III, IV, V	1 each
German I, II, III, IV, V	1 each
Italian I, II, III, IV, V	1 each
Latin I, II, III, IV, V	1 each
Russian I, II, III, IV, V	1 each
Spanish I, II, III, IV, V	1 each
American Sign Language I, II	1 each

B. Teachers of American Sign Language shall have a valid Louisiana teaching certificate and documentation of the following:

1. Provisional Level Certification from the American Sign Language Teachers Association (ASLTA); or
2. Certificate of Interpretation (CI) from the Registry of Interpreters of the Deaf (RID); or
3. Certificate of Transliteration (CT) from the RID; or
4. Certified Deaf Interpreter certification (CDI) from the RID; or
5. Level IV or V Certificate of Competence from the National Association of the Deaf (NAD); or
6. Level IV or V Official Documentation of the videotaped version of the Educational Interpreter Performance Assessment (EIPA).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4; R.S. 273; R.S. 17:284.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§2347. Health Education

A. The health education course offerings shall be as follows.

Course Title(s)	Units
Health Education	1/2

B. Cardiopulmonary resuscitation (CPR) shall be taught.
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:

§2349. Jobs for Louisiana's Graduates

A. Jobs for Louisiana's Graduates elective course credit toward high school graduation shall be awarded to any student who successfully masters the Jobs for Louisiana's Graduates core competencies and other additional competencies in the model curriculum.

B. The Jobs for Louisiana's Graduates course offerings shall be as follows.

Course Title(s)	Units
Job's for Louisiana's Graduates I, II, III, IV	1-3 each

C. Teachers shall be certified in any secondary certification or Jobs for Louisiana's Graduates VTIE certification.

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:

§2351. Journalism

A. The journalism course offerings shall be as follows.

Course Title(s)	Units
Journalism I, II	1 each
Publications I, II (Yearbook)	1 each
Publications I, II (Newspaper)	1 each

B. Teachers must be certified in journalism to teach Journalism.

C. Teachers certified in the area of journalism, English, and/or business education are qualified to teach Publications I and II (Yearbook).

D. Teachers certified in the areas of journalism, and/or English are qualified to teach Publications I and II (Newspaper).

E. Publications I is a prerequisite to Publications II.

F. A maximum of two Carnegie units within the 23 required for graduation may be earned from the six courses listed under journalism.

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:

§2353. Mathematics

A.1. Effective for 2005-2006 incoming freshmen and thereafter, three units of mathematics shall be required for graduation. All students must complete one of the following:

- a. Algebra I (1 unit); or
- b. Algebra I-Pt. 1 and Algebra I-Pt. 2 (2 units); or
- c. Integrated Mathematics I (1 unit).

2. The remaining unit(s) shall come from the following: Integrated Mathematics II, Integrated Mathematics III, Geometry, Algebra II, Financial Mathematics, Advanced Mathematics I, Advanced Mathematics II, Pre-Calculus, Calculus, Probability and Statistics, and Discrete Mathematics.

B. For incoming freshmen 1997-98 to 2004-2005, the three required mathematics courses shall be selected from the following courses and may include a maximum of two entry level courses (designated by E): Introductory Algebra/Geometry (E), Algebra I-Part 1 (E), Algebra I-Part 2, Integrated Mathematics I (E), Integrated Mathematics II, Integrated Mathematics III, Applied Mathematics I (E), Applied Mathematics II, Applied Mathematics III, Algebra I (E), Geometry, Algebra II, Financial Mathematics, Advanced Mathematics I, Advanced Mathematics II, Pre-Calculus, Calculus, Probability and Statistics, and Discrete Mathematics.

C. Students who score at the unsatisfactory achievement level on the mathematics component of grade eight LEAP 21 shall pass a high school remedial course in mathematics before enrolling in any course in the Secondary Program of Studies for Mathematics.

1. Introductory Algebra/Geometry may be used as the high school remediation course for students who have been promoted to the ninth grade without having passed the mathematics component of grade eight LEAP 21.

D. Financial Mathematics may be taught by teachers certified in Business Education.

E. The Mathematics course offerings shall be as follows.

Course Title(s)	Units
Advanced Mathematics I, II	1 each
Algebra I, II	1 each
Algebra I – Part 1	1
Algebra I – Part 2	1
Calculus	1
Discrete Mathematics	1
Financial Mathematics	1
Geometry	1
Integrated Mathematics I, II, III	1 each
Introductory Algebra/Geometry (Remediation Elective)	1
Pre-Calculus	1
Probability and Statistics	1

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:

§2355. Music

A. The music course offerings shall be as follows.

Course Title(s)	Units
Applied Music	1
Beginning Band	1
Beginning Choir	1
Sectional Rehearsal	1
Studio Piano I, II, III	1 each
Advanced Band	1
Advanced Choir	1
Advanced Orchestra	1
Small Vocal Ensemble	1
Wind Ensemble	1

B. Advanced Choir, Advanced Band, Advanced Orchestra, Small Vocal Ensemble, Wind Ensemble, Applied Music, Jazz Ensemble, and Studio Piano III are performance classes with new literature each year; they may be repeated more than once.

C. Approval by DOE is required before private piano and studio strings instruction can be given for credit.

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:

§2357. Physical Education

A. One and one-half units of physical education shall be required for graduation. They shall include Physical Education I and II or adapted Physical Education I and II for eligible special education students.

B. The physical education course offerings shall be as follows.

Course Title(s)	Units
Adapted Physical Education I, II, III, IV	1 each
Physical Education I, II, III, IV	1 each

C. It is recommended that Physical Education I and II be taught in the ninth and tenth grades.

D. No more than four units of physical education shall be allowed for meeting high school graduation requirements.

E. In schools having approved Junior Reserve Officer Training Corps (JROTC) training, credits may, at the option of the local school board, be substituted for the required credits in health and physical education.

F. Extra-curricular activities such as intramural sports, athletics, band, majorettes, drill team, dance team, cheerleaders, or any other type of extra activities shall not be counted for credit toward the required physical education.

G. Students shall be exempted from the requirements in physical education for medical reasons only; however, the minimum number of credits required for graduation shall remain 23.

H. Each LEA shall offer, as part of the high school physical education program, sexually segregated contact sports and sexually integrated noncontact sports. Students shall have the option of enrolling in either or both.

I. Any high school student not enrolled in a physical education course is encouraged to participate in moderate to vigorous physical activity commensurate with the ability of the student for a minimum of 30 minutes per day to develop good health, physical fitness, and improve motor coordination and physical skills.

J. Off-campus athletic training programs may substitute for Physical Education I and Physical Education II if the following conditions are met:

1. permission of the principal;
2. the principal's approval of the content and execution of the athletic program;
3. a reporting system for attendance and grading;
4. approval of the local school board;
5. approval by the DOE; and
6. a hold harmless agreement signed by the parent or guardian of the student who would be participating in the off-campus athletic program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:17.1; R.S. 17:24.4; R.S. 17:276.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§2359. Reserve Officer Training

A. The Reserve Officer Training course offerings shall be as follows.

Course Title(s)	Units
JROTC I, II, III, IV	1 each

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:

§2361. Science

A. Effective for incoming freshmen 1999-2000 and thereafter, the science graduation requirements shall be as follows.

1. 1 unit of Biology
2. 1 unit from the following physical science cluster:
 - a. Physical Science;
 - b. Integrated Science;
 - c. Chemistry I;
 - d. Physics I;
 - e. Physics of Technology I.
3. 1 unit from the following courses:
 - a. Aerospace Science;
 - b. Biology II;
 - c. Chemistry II;
 - d. Earth Science;
 - e. Environmental Science;
 - f. Physics II;
 - g. Physics of Technology II;
 - h. Agriscience II (See paragraph (C) below);
 - i. an additional course from the physical science cluster, or
 - j. a locally initiated science elective.

B. Students may not take both Integrated Science and Physical Science.

C. Agriscience I is a prerequisite for Agriscience II and is an elective course.

D. The Science course offerings shall be as follows.

Course Title(s)	Units
Aerospace Science	1
Agriscience II	1
Biology I, II	1 each
Chemistry I, II	1 each
Earth Science	1
Environmental Science	1
Integrated Science	1
Physical Science	1
Physics I, II	1 each
Physics of Technology I, II	1 each

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:

§2363. Social Studies

A. Three units of social studies shall be required for graduation. They shall be American History; 1/2 unit of Civics and 1/2 unit of Free Enterprise; and one of the following: World History, World Geography, or Western Civilization.

B. The Social Studies course offerings shall be as follows.

Course Title(s)	Units
American Government	1
American History	1
Civics	1
Economics	1
Free Enterprise	1/2
Law Studies	1
Psychology	1
Sociology	1

C. Economics may be taught by a teacher certified in business education.

D. Free Enterprise shall include instruction in personal finance. Such instruction shall included but shall not be limited to the following components:

1. income;
2. money management;
3. spending and credit;
4. savings and investing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4; R.S. 17:274-274.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§2365. Speech

A. The speech course offerings shall be as follows.

Course Title(s)	Units
Speech I, II, III, IV	1 each

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:

§2367. Religion

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 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:

§2369. Theatre Arts

A. The theatre arts course offerings shall be as follows.

Course Title(s)	Units
Theatre I	1
Advanced Theatre	1

B. Advanced Theatre is a performance class with new literature each year; it may be repeated more than once.

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:

§2371. Career and Technical Education Course Offerings

A. Administrative procedures for the operation of program areas in Career and Technical Education are found in §3101-§3109.

B. Safety must be taught in all courses. Refer to Bulletin 1674 Career and Technical Education Safety and Health Manual (1992), for safety information.

NOTE: Refer to Career and Technical Education Course Descriptions and Programs of Study for the required prerequisites.

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:

§2373. Agricultural Education

A. The Agricultural Education course offerings shall be as follows.

Course Title(s)	Recommended Grade Level	Units
Exploratory Agriscience	7-8	-
Agribusiness	11-12	1/2
Agricultural Education Elective I, II	9-12	1/2-3
Agriscience I	9-12	1
Agriscience II	10-12	1
Agriscience III	11-12	1
Agriscience IV	12	1
Agriscience III Laboratory	11-12	1
Agriscience IV Laboratory	12	1
Agriscience-Construction	11-12	1/2
Agriscience Elective	9-12	1
Agriscience-Entrepreneurship	11-12	1/2
Agriscience Internship I	11-12	2
Agriscience Internship II	12	2
Agriscience-Leadership Development	11-12	1/2
Agriscience-Welding Systems I	11-12	1/2
Agriscience-Welding Systems II	11-12	1/2
Animal Systems	11-12	1/2
Aquaculture	11-12	1/2
Biotechnology	11-12	1
Care and Management of Small Animals I	11-12	1/2
Care and Management of Small Animals II	11-12	1/2
Cooperative Agriscience Education I	11-12	3
Cooperative Agriscience Education II	12	3
Crop Systems	11-12	1/2
Environmental Applications	11-12	1/2
Equine Science	11-12	1/2
Food and Fiber	11-12	1/2
Forestry	11-12	1/2
Horticulture I	11-12	1/2

Horticulture II	11-12	1/2
Precision Agriculture	11-12	1
Small Engines (Applications)	11-12	1/2
Industry-Based Certifications		
ABC Welding in Agriscience	11-12	1-3
ABC Carpentry in Agriscience	11-12	1-3
ABC Electricity in Agriscience	11-12	1-3
ABC Pipefitting in Agriscience	11-12	1-3

B. Agriscience III and IV Laboratory, Agriscience Internship I and II, and Cooperative Agriscience Education I and II are offered only to students who are also enrolled in Agriscience III or Agriscience IV for two consecutive semester courses during the year.

C. Semester courses are designed to be offered in the place of, or in addition to, Agriscience III and/or IV.

D. Both Agriscience I and Agriscience II must be completed for one unit of science credit. These courses cannot also count as electives if used to meet the science requirement. Students choosing this option must have 24 credits to graduate.

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:

§2375. Business Education

A. The Business Education course offerings shall be as follows.

Course Title(s)	Recommended Grade Level	Units
Exploratory Keyboarding (Middle School)	6-8	-
Accounting I	10-12	1
Accounting II	11-12	1
Administrative Support Occupations	11-12	1
Business Communications	10-12	1
Business Computer Applications	10-12	1
Business Education Elective I, II	9-12	1/2-3
Business English	12	1
Business Internship I	11-12	2
Business Internship II	12	2
Business Law	11-12	1/2
Computer Technology Literacy	9-12	1
Computer Multimedia Presentations	11-12	1/2
Cooperative Office Education (COE)	12	3
Desktop Publishing	11-12	1
Economics	11-12	1
Entrepreneurship	11-12	1
Financial Mathematics	10-12	1
Introduction to Business Computer Applications	9-12	1
Keyboarding	9-12	1/2
Keyboarding Applications	9-12	1/2
Lodging Management I	10-12	1-3
Lodging Management II	11-12	1-3
Principles of Business	9-12	1
Telecommunications	10-12	1/2
Web Design	10-12	1/2
Word Processing	11-12	1

B. Cooperative Office Education shall be limited to seniors. The students shall have successfully completed Keyboarding/Keyboarding Applications or Introduction to Business Computer Applications and one of the following: ASO or Word Processing or BCA, and have maintained an overall "C" average. The students' attendance records should

also be considered. Other prerequisites may be required by the LEA.

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:

§2377. General Career and Technical Education

A. General Career and Technical Education course offerings shall be as follows.

Course Title(s)	Recommended Grade Level	Units
CTE Internship I	11-12	2
CTE Internship II	12	2
General Cooperative Education I	11-12	3
General Cooperative Education II	12	3
Education for Careers	9-12	1/2-1
Teacher Cadet I	11-12	1
Teacher Cadet II	12	1
Advanced Television Broadcasting I	10-12	1-3
Advanced Television Broadcasting II	11-12	1-3
Digital Media I	10-12	1-3
Digital Media II	11-12	1-3
Oracle Internet Academy		
Data Modeling and Relational Database Design	11-12	1/2
Introduction to SQL	11-12	1/2
Introduction to Java	11-12	1/2
Java Programming	11-12	1/2
Finance Academy		
Economics and the World of Finance	11-12	1/2
Banking and Credit	11-12	1/2
Financial Planning	11-12	1/2
Securities	11-12	1/2
Insurance	11-12	1/2
International Finance	11-12	1/2
Introduction to Financial Services	11-12	1/2-1
Hospitality and Tourism Academy		
Introduction to Travel and Tourism	11-12	1/2
Travel and Tourism II	11-12	1/2
Travel Destinations I, II	11-12	1/2
Systems Applications	11-12	1/2
Economics for Travel and Tourism	11-12	1/2
Information Technology Academy		
Introduction to Information Technology	11-12	1/2
Digital Networks	11-12	1/2
Advanced Web Tools	11-12	1/2
Databases	11-12	1/2

B. General Cooperative Education courses shall be limited to students who meet the specific prerequisites and requirements of one of the specialized cooperative education programs.

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:

§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
FACS Internship I	11-12	2
FACS Internship II	12	2
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
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:

§2381. Health Occupations

A. Health Occupations course offerings shall be as follows.

Course Title(s)	Recommended Grade Level	Units
AHEC of a Summer Career Exploration	9-12	1/2
Allied Health Services I	10-12	1-2
Allied Health Services II	10-12	1-2
Cooperative Health Occupations	11-12	3
Dental Assistant I	10-12	1-2
Dental Assistant II	11-12	2-3
Emergency Medical Technician—Basic	10-12	2
First Responder	9-12	1/2-2
Health Occupations Elective I, II	9-12	1/2-3
Health Occupations Internship I	11-12	2
Health Occupations Internship II	12	2
Health Science I	11-12	1-2
Health Science II	12	1-2
Introduction to Emergency Medical Technology	10-12	2
Introduction to Health Occupations	9-12	1
Introduction to Pharmacy Assistant	10-12	1-2
Medical Assistant I	10-12	1-2
Medical Assistant II	11-12	1-2
Medical Assistant III	12	1-2
Medical Terminology	9-12	1
Nursing Assistant I	10-12	1-3
Nursing Assistant II	11-12	1-3
Pharmacy Technician	12	1-2
Sports Medicine I	10-12	1-2
Sports Medicine II	11-12	1-2

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:

§2383. Marketing Education

A. Marketing Education course offerings shall be as follows.

Course Title(s)	Recommended Grade Level	Units
Advertising and Sales Promotion	11-12	1
Cooperative Marketing Education I	11-12	3
Cooperative Marketing Education II	12	3
Entrepreneurship	11-12	1
Marketing Education Elective I, II	9-12	1/2-3
Marketing Internship I	11-12	2
Marketing Internship II	12	2
Marketing Management	11-12	1
Marketing Research	11-12	1
Principles of Marketing I	9-12	1
Principles of Marketing II	12	1
Retail Marketing	11-12	1
Tourism Marketing	11-12	1

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§2385. Technology Education

A. Technology Education (formerly industrial arts) course offerings shall be as follows.

Course Title(s)	Recommended Grade Level	Units
Communication/Middle School	6-8	-
Construction/Middle School	6-8	-
Manufacturing Technology/Middle School	6-8	-
Modular Technology/Middle School	6-8	-
Transportation Technology/Middle School	6-8	-
Advanced Electricity/Electronics	10-12	1
Advanced Metal Technology	10-12	1
Advanced Technical Drafting	10-12	1
Advanced Wood Technology	10-12	1
Architectural Drafting	10-12	1
Basic Electricity/Electronics	9-12	1
Basic Metal Technology	9-12	1
Basic Technical Drafting	9-12	1
Basic Wood Technology	9-12	1
Communication Technology	9-12	1
Construction Technology	10-12	1
Cooperative Technology Education	10-12	3
Energy, Power, and Transportation Technology	9-12	1
General Technology Education	9-12	1
Manufacturing Technology	9-12	1
Materials and Processes	10-12	1
Physics of Technology I	10-12	1
Physics of Technology II	11-12	1
Power Mechanics	9-12	1
Technology Education Computer Applications	9-12	1
Technology Education Elective I, II	9-12	1/2-3
Technology Education Internship I	11-12	2
Technology Education Internship II	12	2
Welding Technology	10-12	1

Industry-Based Certifications		
Process Technician I, II	11-12	1
ABC Carpentry I, II TE	11-12	1-3
ABC Electrical I, II TE	11-12	1-3
ABC Instrumentation Control Mechanic I, II	11-12	1-3
ABC Pipe Fitter I, II TE	11-12	1-3
ABC Welding Technology I, II TE	11-12	1-3

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:

§2387. Trade and Industrial Education

A. Trade and Industrial Education course offerings shall be as follows.

Course Title(s)	Recommended Grade Level	Units
Air Conditioning/ Refrigeration I, II	11-12	1-3
Air Conditioning/ Refrigeration III, IV	11-12	2-3
Auto Body Repair I, II	11-12	1-3
Auto Body Repair III, IV	11-12	2-3
Automotive Technician I, II	11-12	1-3
Automotive Technician III, IV, V, VI	11-12	3
General Automotive Maintenance	11-12	1-3
G. M. Technician I, II	11-12	1-3
ABC Carpentry I, II	11-12	1-3
ABC Electrical I, II	11-12	1-3
ABC Instrumentation Control Mechanic I, II	11-12	1-3
ABC Pipe Fitter I, II	11-12	1-3
ABC Welding Technology I, II	11-12	1-3
Masonry I, II	11-12	1-3
Cabinetmaking I, II	11-12	1-3
Carpentry I, II	11-12	1-3
Carpentry III, IV	11-12	2-3
Culinary Occupations I, II	11-12	1-3
Culinary Occupations III, IV	11-12	2-3
Custom Sewing I, II	11-12	1-3
Computer Electronics I, II	11-12	1-3
Commercial Art I, II	11-12	1-3
T & I Cooperative Education (TICE) I	11-12	1-3
T & I Cooperative Education (TICE) II	12	1-3
T & I Elective	11-12	1-3
Cosmetology I, II	11-12	1-3
Cosmetology III, IV	11-12	2-3
Diesel Mechanics I, II	11-12	1-3
Diesel Mechanics III, IV	11-12	2-3
Drafting and Design Technology I, II	11-12	1-3
Drafting and Design Technology III, IV	11-12	2-3
Basic Electricity I, II	11-12	1-3
Electronics I, II	11-12	1-3
Industrial Electronics I, II	11-12	1-3
Electrician I, II	11-12	1-3
Electrician III, IV	11-12	2-3
Graphic Arts I, II	11-12	1-3
Graphic Arts III, IV	11-12	2-3
Horticulture I, II	11-12	1-3
Industrial Engines I, II	11-12	1-3
Laboratory Technology I, II	11-12	1-3
Industrial Machine Shop I, II	11-12	1-3
Industrial Machine Shop III, IV	11-12	2-3
Marine Operations I, II	11-12	1-3
Photography I, II	11-12	1-3
Plumbing I, II	11-12	1-3
Printing I, II	11-12	1-3
Sheet Metal I, II	11-12	1-3
Outdoor Power Equipment Technician I, II	11-12	1-3

Outdoor Power Equipment Technician III, IV	11-12	2-3
Television Production I, II	11-12	1-3
Upholstery I, II	11-12	1-3
Welding I, II	11-12	1-3
Welding III, IV	11-12	2-3

B. Trade and industrial education programs may be offered in two consecutive class periods, five days per week, for 36 weeks each year for two units of credit, or may be offered with three consecutive class periods for three units of credit in the selected Trade and Industrial Education program.

C. Each LEA that operates a career/technical center or comprehensive high school may award 1 1/2 units of credit to students enrolled in a two-hour block for 36 weeks, or 2 1/2 units of credit to students enrolled in a three-hour block for 36 weeks in approved trade and industrial education programs. This scheduling allows students to be excused from class for one hour each day for one semester to take the required course in Free Enterprise at either the tenth, eleventh, or twelfth grade level.

D. An LEA may offer a one-hour trade and industrial education program for one unit of credit at the ninth or tenth grade level as a prerequisite to enrollment in a related trade and industrial education program at the tenth, eleventh, or twelfth grade level. The course shall be in the programmatic area in which the trade and industrial education instructor is certified to teach.

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:

§2389. Credit for Career and Technical Education Courses

A. Credits for partial completion of two- or three-hour blocks of career and technical education courses shall be granted for unusual or extenuating circumstances only.

1. Requests for partial credit because of unusual or extenuating circumstances shall be made as follows:

a. written requests from the local school principal and approval by the local superintendent shall be made to the Division of Family, Career and Technical Education, Louisiana Department of Education (DOE);

b. a copy of the written response shall accompany the student's transcript when it is sent to the Division of School Standards, Accountability and Assessment prior to his/her graduation if the request for partial credit has been granted.

B. A secondary student attending a postsecondary technical college during the regular school year may receive credit for instruction in any program area offered in the postsecondary technical college if time requirements for Carnegie units are met and if an equivalent course is not offered at the student's local school.

C. A secondary student attending a postsecondary technical college summer program may receive credit for instruction in any program area offered in the postsecondary technical college if time requirements for Carnegie units are met even if an equivalent course is offered at the student's local school during the regular school year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:183.1 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§2391. Secondary Students Attending a Private Cosmetology School

A. A secondary student attending an approved cosmetology school, licensed by the Louisiana State Board of Cosmetology, may receive trade and industrial education credit if time requirements for Carnegie units are met and if an equivalent course is not offered at the student's local school.

B. A copy of the written agreement between the LEA and the private cosmetology school shall be on file in the central office.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§2393. Approval for Experimental Programs

A. Experimental programs are programs that deviate from established standards. Such programs shall be approved by the DOE and carried out under controlled conditions.

B. Approval of experimental programs shall be granted on a yearly basis not to exceed three years, after which time permanent approval shall be considered using the procedures listed below.

1. A letter of intent containing the following information shall be submitted to the Division of Student Standards and Assessments, DOE, at least 90 days prior to the anticipated date of implementation:

- a. proposed title of program;
- b. name and address of school;
- c. name and signature of superintendent;
- d. name, title, address, and telephone number of person submitting proposal;
- e. units of credit to be granted; and
- f. source of funding.

2. In addition, a brief narrative report stating the intent of the program and the procedures by which the program will be conducted and evaluated, and the following shall be submitted:

- a. a statement documenting support for the intended program;
- b. a statement outlining the exact guideline deviations necessary to implement the program;
- c. a statement outlining specific timelines for the planning and implementing phases of the program, including intended procedures;
- d. a statement of the evaluation procedures to be used in determining the program's effectiveness (These procedures should spell out specific objectives to be accomplished.);
- e. a statement indicating approximate number of students to be involved in the project;
- f. a statement of qualifications or certification of instructional personnel; and
- g. a statement stipulating that applicable local, state, and federal regulations will be followed.

3. An evaluation by the local governing authority shall be submitted annually at the close of the school year to the Division of Student Standards and Assessment until permanent status is granted.

4. Southern Association of Colleges and Schools member schools should comply with appropriate Southern Association standards.

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:

§2395. Distance Education

A. An LEA choosing to implement a distance education program shall establish policy and procedures for reviewing and approving programs that meet the following Standards for Distance Education as established by BESE.

1. Local Distance Education Programs shall support the State Content Standards Initiatives.

a. Distance education programs shall support the mission of the standards-based initiatives: "to develop rigorous and challenging standards that will enable all Louisiana students to become lifelong learners and productive citizens for the 21st century."

b. Distance education courses shall incorporate the Foundation Skills of the State Content Standards (Communication, Problem Solving, Resource Access and Utilization, Linking and Generating Knowledge, and Citizenship).

2. Distance education shall comply with all policies set forth by BESE.

3. Development of Standards-Based Distance Education Program

a. The LEA shall ensure that each distance education course is provided by an institution accredited by a nationally recognized accrediting body or is authorized by the LEA or the DOE.

b. The LEA shall ensure that the content, instruction and assessment of each distance education course are comparable in rigor and breadth to a traditionally delivered course.

c. The providing LEA, school or agency shall define minimum prerequisite technology competencies for student participation in distance education courses if such competencies are required for course access.

d. The providing LEA, school or agency and the LEA or school receiving distance education courses shall provide necessary and relevant resources, including, but not limited to research information, periodicals, supplemental materials and/or extension resources.

e. The providing LEA, school or agency shall ensure that teachers delivering instruction in distance education courses use a variety of methods to assess student mastery of the content as reflected in the Louisiana Content Standards.

f. The providing LEA, school or agency shall ensure that teachers delivering instruction in distance education courses provide timely and informative feedback for support and remediation.

g. The receiving LEA or school shall ensure that instruction is provided by certified teachers with appropriate credentials.

h. The providing LEA, school or agency shall provide a complete syllabus prior to course implementation.

i. The providing LEA, school or agency shall provide course content that is systematically designed, clearly written and revised based on student performance and feedback.

j. The providing LEA, school or agency shall provide courses which are designed to engage students in learning activities based on various learning styles and to accommodate individual differences, including student disabilities.

k. The LEA shall evaluate the effectiveness of each distance education course received in the district.

l. The providing LEA, school or agency shall ensure that all course content complies with copyright fair use laws and policies.

m. The providing LEA, school or agency shall ensure that instruction provides opportunities for student-to-teacher and student-to-student interaction.

4. Management and Administration

a. The providing and receiving LEA, school, or agency shall judiciously address issues relative to course load and student-teacher ratio as appropriate for the particular method of delivery and particular course content and as recommended in the Louisiana Distance Education Handbook.

b. The receiving district shall ensure that a facilitator who is a qualified teacher is assigned fulltime to each class participating in distance education courses.

c. The providing and receiving LEA, school or agency shall ensure that the teacher providing instruction and the facilitator adhere to guidelines stated in the Louisiana Distance Education Handbook.

d. The receiving LEA shall award credit for distance education courses.

e. The providing and receiving LEA, school or agency shall ensure that the teacher providing instruction and the facilitator are provided adequate technical support to ensure ease of use for faculty and students.

f. The teacher delivering instruction and the facilitator shall be responsible for verifying student participation and performance.

g. The providing LEA, school or agency shall provide training and/or support in designing course content to fit the delivery methods proposed for distance education courses.

h. The receiving LEA shall provide adequate and appropriate technical support to students and facilitator.

i. The teacher delivering instruction shall provide alternate course procedures and activities for use in case of technical problems when the technical problems prevent normal course delivery.

j. The teacher delivering instruction shall maintain a secure environment which includes, but is not limited to monitoring online discussions and other instructional activities.

k. The teacher delivering instruction and the facilitator shall practice ethical and legal use of equipment.

l. The receiving LEA shall provide the facilitator ongoing staff development to support distance education courses technically and instructionally.

m. The facilitator shall implement alternate course procedures and activities when technical problems prevent normal course delivery.

n. The facilitator shall maintain secure environments, including, but not limited to monitoring online discussions and other instructional activities as they

occur in the classroom as directed by the teacher delivering instruction.

o. The receiving LEA shall ensure that students have appropriate and adequate access to equipment required for course participation.

5. Specifications

a. The receiving LEA shall provide students enrolled in distance education courses technical access which meets specifications in the Louisiana Distance Education Handbook.

b. The receiving LEA shall provide instructional and communication hardware which meets current industry standards.

c. The receiving LEA shall provide adequate funding for hardware maintenance.

d. The receiving LEA shall provide immediate and sustained technical support.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4; R.S. 17:183.3.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§2397. Career Options

A. Preparation for Choosing an Area of Concentration

1. To prepare students for choosing a career option at the high school level, at least six activities which expose students to career and technical and academic fields of study shall be conducted at each grade level in grades six through eight during each school year. Such activities may include field trips, guest speakers, community service activities, and uses of technology such as word processing, desktop production, computer-assisted drafting and graphics. Each school with grades six through eight shall maintain records of such activities.

2. By the end of the eighth grade, each student shall develop, with the input of his family, a Five Year Educational Plan. Such a plan shall include a sequence of courses which is consistent with the student's stated goals for one year after graduation. Each student's Five Year Educational Plan shall be reviewed annually thereafter by the student, parents, and school advisor and revised as needed. Every middle, junior, or high school shall require that the parent/guardian/legal custodian sign his/her child's schedule form and the Five Year Educational Plan for students in grades 8-12. Students shall be able to change from one major (area of concentration) to the other at the end of any school year.

3. School counselors or others designated by the school principal, or both, shall be responsible for the completion of the Five Year Educational Plan of each eighth grade student. The school counselors and others shall counsel each student with regard to high school graduation requirements and shall assist the student in developing his plan. The school counselors and others shall forward such plans to the appropriate high schools where such students shall attend.

4. During the ninth and tenth grades, each student shall pursue the rigorous core curriculum required by his school for his chosen major. The core curriculum shall include required coursework as established by BESE and appropriate elective courses.

B. Career Major (Area of Concentration)

1. A career major shall provide a student with greater technical skill and a strong academic core and shall be

offered to each high school student. Such a major shall be linked to postsecondary options and shall prepare students to pursue either a degree or certification from a postsecondary institution, an industry-based training or certification, an apprenticeship, the military, or immediate entrance into a career field.

2. Each high school shall offer at least one career major program. Schools shall review majors offered each year and expand offerings as appropriate, including courses offered through articulation, correspondence, and technological methods such as distance learning through the Internet and compressed video.

3. The career major shall consist of at least six or more credits consisting of four credits in an area of concentration and two related credits, including one credit in a computer technology course. Courses shall be selected to prepare a student for postsecondary education or a career.

C. Curricula Design Team

1. Career major programs in each school system, high school, or consortia of schools shall be designed by a curriculum design team.

2. Each superintendent, or his designee, shall be responsible for establishing the agenda, scheduling meetings, and presiding over each meeting of the curriculum design team.

D. Program Approval and Evaluation Process

1. Each curriculum design team shall submit any proposed career major program curriculum to the appropriate school board for approval. The approved curriculum shall then be submitted not later than October 1 of each school year to the DOE for BESE approval.

2. Each LEA shall compile a report summarizing their year-end evaluations and shall submit such report by August 1 of each school year to the DOE. The DOE shall use such evaluations to prepare a comprehensive report regarding the career major program, to be submitted to the Committees on Education of the Senate and House of Representatives by no later than December 1 of each year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:183.1 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

Chapter 25 Summer Schools, Special Ed Extended School Year Programs

§2501. Elementary Summer Schools

A. Approved schools may offer a summer school program to enable students who have failed in subjects to remove deficiencies and be considered for promotion to the next grade. All LEAs that offer summer school for promotional purposes shall adhere to the standards below.

B. Summer schools shall be organized and operated under the administration and supervisory control of the superintendent of the LEA.

C. The LEA or school principal shall apply to the DOE for approval of each summer school program.

1. An application for approval for each summer school's offering shall be filed no later than the end of the first week after the summer session begins.

2. The application forms, provided by the DOE, shall be submitted to the Director of Student Standards and Assessments.

3. The application shall be approved by the superintendent of the LEA and the principal of the summer school, if applicable.

D. An on-site evaluation of each summer school program shall be made by personnel from the DOE to verify information submitted on the report, to evaluate the quality of the instructional program, and to approve its acceptance by the DOE.

E. Summer schools shall be conducted in approved school buildings.

F. Summer schools having seven or more teachers shall have a certified principal.

G. Teachers employed to teach summer school shall hold a standard A, B, or C teaching certificate in the subject area or areas of teaching.

1. Teachers employed on a "TAT" and "OFAT" certificate for the regular school year may be employed during the summer session in the same area(s) taught during the regular school year, provided the superintendent verifies that no regularly certified teacher was available for the summer session.

H. The class size shall not exceed 20 students per teacher per subject in a regular summer school.

I. Each teacher shall teach only one subject for removal of deficiencies during a single period.

J. A student attending summer school for promotional purposes shall not enroll for more than two subjects.

K. The library/media center or library books as well as all regular teaching aids and equipment shall be available for summer school use.

L. Textbooks, supplementary materials, and supplies adequate for effective instruction shall be provided.

1. Textbooks used during the summer school shall be chosen from the state-approved list.

2. No fee shall be charged for textbooks used during summer school.

M. The minimum attendance for all elementary students to receive credit or pass a subject shall be 60 hours for one subject unless the LEA imposes a stricter attendance policy.

N. Students attending summer school for promotional purposes shall have written consent by the principal of the last school they attended.

O. Elementary summer schools shall offer a minimum of 70 hours of instruction per subject for removal of deficiencies.

P. Summer schools shall be given one of the following classification categories:

1. Approved meets all summer school standards.

2. Unapproved deviates from one or more of the summer school standards.

Q. Any unapproved summer school shall not operate a summer school program the following year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§2503. Secondary Summer Schools

A. Approved schools may offer summer school to enable students to schedule courses to enrich their experiences, to take new subjects, and to enable students who have failed in

subjects to remove deficiencies. Each LEA that offers summer school shall adhere to the standards below.

B. Summer schools shall be organized and operated under the administrative and supervisory control of the superintendent of the LEA.

C. Summer schools shall be conducted in approved school buildings.

D. Summer schools with seven or more teachers shall have a principal holding certification in principalship.

1. In an LEA in which there are several summer schools with fewer than seven teachers, the schools shall be supervised collectively by an individual holding certification in principalship.

E. The summer school administration shall have written permission from the principal of the student's home school for the student to attend summer school if high school credit is to be awarded or if an elementary student is to be promoted.

F. Any summer school operated for the purpose of awarding high school credits or for promotional purposes at the elementary level shall apply to the DOE for an approval classification.

1. An application for approval for each summer school's offering shall be filed no later than the end of the first week after the summer session begins.

2. The application forms, provided by the DOE, shall be submitted to the Director of Student Standards and Assessments.

3. The application shall be approved by the superintendent of the LEA and the principal of the summer school, if applicable.

G. An on-site evaluation of each summer school program shall be made by personnel from the DOE to verify information submitted on the report, to evaluate the quality of the instructional program, and to approve its acceptance by the DOE.

H. Summer schools having both elementary and secondary students are required to follow elementary standards for elementary students and secondary standards for secondary students.

I. Teachers in summer school shall hold a standard A, B, or C teaching certificate in the subject area or areas teaching.

1. Teachers employed on a "TAT" and "OFAT" certificate for the regular school year may be employed during the summer session in the area(s) taught during the regular school year, provided the superintendent verifies that no regularly certified teacher was available for the summer session.

J. The teaching load and class size shall not exceed that of the regular session.

K. No teacher shall be allowed to teach more than two subjects during one period of time.

L. Library/media center, laboratory, and audiovisual aids shall be available in the facilities used for summer school.

M. Textbooks, supplementary materials, and supplies adequate for effective instruction shall be provided.

1. Textbooks used during the summer school shall be chosen from the DOE-approved list.

2. No fee shall be charged for textbooks used during summer school.

N. Summer schools shall offer 90 hours of instruction for 1/2 unit of new credit, 180 hours for one unit of new credit,

60 hours of instruction for 1/2 unit of repeat credit, 120 hours for one unit of repeat credit, and 50 or more hours for 1/2 unit for GEE 21 Remediation.

O. In order to be eligible to receive credit, summer school students shall be in attendance a minimum of 70 hours for 1/2 unit of new credit, 140 hours for 1 unit of new credit, 47 hours for 1/2 unit of repeat credit or credit for GEE 21 Remediation, and 94 hours for one unit of repeat credit.

P. Summer schools shall be given one of the following classification categories:

1. Approved meets all summer school standards

2. Unapproved deviates from one or more of the summer school standards.

Q. Any unapproved summer school shall not operate a summer school program the following year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§2505. Extended School Year Program for Eligible Exceptional Students

A. Each LEA shall provide eligible exceptional students special educational and related services in excess of the normal school cycle when stated in the IEP.

B. The determination concerning the need or lack of need for an educational program beyond the normal school cycle made by the participants in an IEP meeting shall be reviewed annually to ascertain any changes in the student's needs.

C. The IEP shall include special educational and related services in excess of the normal school cycle when the multi-source data indicate that, without such instruction, a significant loss of educational skills shall occur.

D. The type and length of the extended program shall be determined on an individual basis.

AUTHORITY NOTE: Promulgated in accordance with 20 USCS 1412 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

Chapter 27 Adult Education Programs

§2701. Program Administration

A. The Adult Education Program shall be administered by the DOE and operated by eligible entities as stipulated in the authorizing federal legislation. The DOE shall certify adult education sites of instruction using procedures as approved by BESE.

B. Data quality policies and procedures aligned to the National Reporting System (NRS) for Adult Education are applicable to all programs administered by the DOE and operated by eligible entities as stipulated in the authorizing legislation.

1. Approved assessments for Adult Basic Education, Adult Secondary Education, and English-as-a-Second Language students to determine placement upon student intake or to demonstrate educational growth are as follows:

a. Assessments for Adult Basic Education and Adult Secondary Students:

i. Test of Adult Basic Education (TABE);

ii. Adult Measure of Essential Skills (AMES);

iii. Comprehensive Adult Student Assessment System (CASAS);

iv. WorkKeys (May be used only at the Adult Secondary Education Educational Functioning Level).

b. Assessments for English-as-a-Second Language Students:

i. Basic English Skills Test (BEST) and BEST Plus;

ii. Comprehensive Adult Student Assessment System (CASAS);

iii. Student Performance Levels (SPL).

2. Data will be reported quarterly, on the 26th day of October, January, April, and July, or the first business day following the 26th of the month.

3. Adult education sites of instruction are required to post-test adult education students to demonstrate educational growth. Post-tests are to be administered to adult education students after the student has:

a. attended for 50 hours; or

b. enrolled for 90 days; or

c. completed an Individualized Prescription of Instruction for the area being used for NRS reporting purposes.

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

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§2703. Requirements for Students

A. Students must be 17 years of age or older to enroll in an adult education program.

B. The parent, tutor, or other person responsible for the school attendance of a child who is under the age of 18 and who is enrolled in school beyond his sixteenth birthday may request a waiver from the local superintendent for the child to exit school to enroll and attend an adult education program approved by BESE.

1. In the case of a child with no parent, tutor, or other person responsible for his school attendance, the local school superintendent may act on behalf of the student in making such a request if one or more of the following hardships exist and if the following appropriate documentation is on file at the local school board office:

a. pregnant or actively parenting;

b. incarcerated or adjudicated;

c. institutionalized or living in a residential facility;

d. chronic physical or mental illness;

e. family and/or economic hardships.

2. The local school superintendent or his/her designee may approve the request without requesting action from BESE. If the request to exit school to enroll in a BESE-approved adult education program is denied at the local level, a student may request the waiver from the DOE for approval by BESE with documentation of reason for denial at the local level. Students seeking to exit school to enroll in adult education, who are enrolled in a formal education setting other than a public K-12 institution, may request a waiver from the DOE.

3. State or federally funded entities operating an adult education program or activity shall not exclude exceptional persons.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§2705. Requirements for Taking the GED Test

A. Age Requirements

1. A student shall be 17 years of age or older in order to be authorized to be administered the GED Test.

2. A married or emancipated individual may be permitted to take the GED Test at 16 years of age and above.

3. A student who has attained the age of 16 and qualified to take the GED Test may request an age waiver from the local school superintendent if one or more of the following hardships exist and if appropriate documentation is on file at the local school board office:

a. pregnant or actively parenting;

b. incarcerated or adjudicated;

c. institutionalized or living in a residential facility;

d. chronic physical or mental illness;

e. family and/or economic hardships.

4. All other requests for age waivers, because of hardships not listed above, must be approved by the BESE prior to the students' taking the GED Test.

5. Individuals 15 years of age and below shall not be permitted to take the GED test under any circumstances.

B. Qualifying Requirements

1. Individuals 19 years of age or above do not have to qualify for the GED by taking the Official Half-Length GED Practice Test.

2. Individuals between 17-18 years of age or 16 years of age with an approved age waiver may qualify for the GED Test by taking the Official Half-Length GED Practice Test and scoring a minimum of 40 on each part, with an average score of 45.

3. Qualifying scores on the Official Half-Length GED Practice Test shall be certified by State-approved adult education sites of instruction. Any state-approved adult education site of instruction may recommend an individual to take the GED Test.

4. The GED Test may not be administered to candidates who are enrolled in an accredited high school unless they are enrolled in the PreGED/Skills Option Program (The Options Program).

5. The GED Test may not be administered to candidates who have graduated from an accredited high school.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§2707. Requirements for Passing the GED Test

A. To complete the GED Test successfully, a student must earn the minimum standard score approved by the governing bodies of the American Council of Education.

B. The same form shall be used on all five tests when a student is being administered the GED Test.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§2709. Requirements for GED Retesting

A. A student other than a veteran or member of the Armed Forces shall receive instruction in the area(s) of deficiency until such time as the instructor certifies the

student to be proficient in the failed section(s). A veteran or member of the Armed Forces may receive instruction if the individual desires.

B. A student may not be retested before 30 days have elapsed since the student last tested.

C. Retesting shall be performed on a form of the test different from the one originally used in testing. No form may be used a second time. If more than one test is being repeated by a student, all retests shall be on the same form.

D. The DOE will retain records of a student's unsuccessful attempts to pass the GED Test for only five years following the individual's last attempt to pass the test according to the regulations approved by the governing bodies of the American Council on Education. The student must retest on all five sections of the GED Test, should the five years elapse.

E. The student shall score a minimum of 410 on each of the retested sections.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§2711. Issuance of Equivalency Diplomas

A. A high school equivalency diploma will be issued from the DOE after the student has successfully completed the GED Test.

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

C. Veterans do not need to submit qualifying scores.

D. To be eligible for an equivalency diploma based on results of the GED Test, a veteran or member of the Armed Forces shall be a legal resident of Louisiana for six consecutive months or shall have formerly attended a Louisiana school.

E. A student who has earned a Louisiana High School Equivalency Diploma issued by the DOE is considered a Louisiana high school graduate in every respect.

F. A student who has received a high school equivalency diploma may return to a regular high school program but will not be allowed to participate in athletic activities.

G. Public high school equivalency diplomas shall be signed by the State Superintendent of Education and the President of BESE.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:14; R.S. 17:7(5)(C).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§2713. Regular High School Diploma for Veterans or Members of the United States Armed Forces

A. Veterans or members of the United States Armed Forces shall be eligible to pursue a regular high school diploma.

1. A person is considered a veteran if he/she has served at least 90 days in active military service and has been honorably discharged from such service.

2. A person is considered a member of the armed forces if he or she is engaged in active military duty in the Army, Navy, Air Force, Marine Corps, or Coast Guard. A

member of the National Guard is not considered a "member of the Armed Forces" unless his unit has been federalized by the U.S. Government.

B. Any person who served honorably in the United States Armed Forces and has made satisfactory scores on the GED Test shall be awarded a regular diploma if he or she has earned a minimum of eight resident units of credit from a State-approved high school, regardless of the requirements for regular high school graduates.

C. A member of the United States Armed Forces or an honorably discharged veteran shall be awarded a regular high school diploma upon completion of 20 or 22 or 23 units of work, depending upon the graduation requirements in effect upon his or her entry in high school, regardless of the requirements for regular graduates.

D. To be eligible for a regular diploma based on results of the GED Test, a member of the armed forces, or an honorably discharged veteran, shall be a legal resident of Louisiana, or shall have formerly attended an approved Louisiana school.

E. A veteran who formerly attended an approved Louisiana school shall submit his/her application for a regular diploma to the principal of the last school he or she attended in Louisiana.

F. An applicant who now lives in Louisiana and never enrolled in a Louisiana school, but who attended an approved high school or elementary school in another state, shall submit his application for a regular diploma to the principal of the nearest high school.

G. A certified copy of the record of the GED Test shall accompany the Certificate of High School Credits if administered by an official GED testing center other than one approved by the State Department of Education.

1. A statement giving the date of the applicant's entrance into the United States Armed Forces shall be made in the "remarks" column of the Certificate of High School Credits.

H. Service Credit

1. Two units of elective credit toward high school graduation shall be awarded to any member of the United States Armed Forces, their reserve components, the National Guard, or any honorably discharged veteran who has completed his/her basic training, upon presentation of a military record attesting to such completion.

2. Veterans shall receive credit, up to a maximum of two units, for special training obtained while in the armed forces comparable with courses offered in civilian secondary schools.

3. All subjects completed by a member of the armed forces, or by an honorably discharged veteran, through the United States Armed Forces Institute, the Marine Corps Institute, or the Coast Guard Institute, shall be credited at face value.

4. The following procedure shall be followed for veterans who have attended school in any state but do not have records:

a. The principal shall indicate on the Certificate of High School Credits:

- i. the name of the veteran; and
- ii. the name of the school last attended;

b. Official records attesting to this fact shall be on file in the principal's office.

5. If a diploma is to be granted on the basis of completion of 20 or 22 or 23 units, a complete record of all high school units earned shall be listed.

6. Only resident units completed shall be listed if a diploma is to be issued on the basis of a minimum of eight units of high school work and successful completion of the GED Test.

7. Work completed in residence at fully accredited high schools from other states shall be accepted and applied toward meeting graduation requirements.

8. Official records of high school work being applied toward meeting the requirements for graduation shall be in the files of the school issuing the diploma.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§2715. Evening Schools for Adults

A. All DOE-approved high schools may offer courses for adults in the evenings or at such times as necessary apart from the regular daily school schedules.

1. Before being assigned adult education courses, a high school shall submit a report in the form of an amendment to the Annual School Report to the DOE.

2. High school credit may be granted only in those courses listed in the program of studies.

3. The minimum aggregate time allotment for one unit in a course shall not be less than 180 clock hours of instruction, with no limitation on the length of class periods.

B. Standards required of DOE-approved high schools shall be the same for evening schools for adults in which high school credit is granted.

1. In those cases in which credit is allowed for successful completion of the courses, such credit may be considered as having been earned in residence.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

Chapter 29 Alternative Schools and Programs

§2901. Philosophy and Need For Alternative Schools/Programs

A. Alternative schools shall provide for:

1. identifying the needs of students;
2. using group and individualized courses of study;
3. providing assistance with social skills and work habits; and
4. using alternative teaching methods.

B. Alternative schools shall respond to particular educational needs within the community.

C. The local educational governing authority shall pass a resolution establishing the need for the alternative school/program and setting forth its goals and objectives.

D. Each alternative school/program shall develop and maintain a written statement of its philosophy and the major purposes to be served by the school/program. The statement shall reflect the individual character of the school/program and the characteristics and needs of the students it serves.

E. The educational school/program shall be designed to implement the stated goals and objectives, which shall be directly related to the unique educational requirements of its student body.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§2903. Approval For Alternative School/Programs

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

B. Approval to operate an Alternative School/Program shall rest with the LEA.

1. An LEA choosing to implement an Alternative School/Program shall submit to the Division of Family, Career and Technical Education by September 1st of each school year a list of its approved Alternative Schools/Programs.

2. The DOE will provide BESE with a listing of approved alternative schools/programs in October of each year.

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

D. An annual school report based upon the standards for approval of alternative schools shall be made to the DOE on or before the date prescribed by the DOE.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§2905. Evaluation of Alternative School/Programs

A. Each LEA operating an alternative school annually shall evaluate such school. The evaluation shall include testing of basic skills for student participants. The process of evaluation shall also include teacher, parent, and student input from the alternative school.

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

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§2907. PreGED/Skills Option Program

A. A school system shall implement the PreGED/Skills Option Program and shall obtain approval from the DOE at least 60 days prior to the establishment of the program. NOTE: Refer to High Stakes Testing Policy in Bulletin 1566CGuidelines for Pupil Progression Plans.

B. A program application describing the PreGED/Skills Option Program shall be submitted and shall address the following program requirements.

1. Students who shall be 16 years of age or older or who shall turn 16 years of age during the year they are to enroll into the program and meet one or more of the following criteria:

- a. shall have failed LEAP 21 English language arts and/or math eighth grade test for one or two years;
- b. shall have failed English language arts, math, science and/or social studies portion of the GEE 21;
- c. shall have participated in alternate assessment;
- d. shall have earned not more than 5 Carnegie units by age 17, not more than 10 Carnegie units by age 18, or not more than 15 Carnegie units by age 19;
- e. students with Limited English Proficiency shall be considered eligible for the PreGED/Skills Option Program.

2. Enrollment is voluntary and requires parent/guardian consent.

3. Counseling is a required component of the program.

4. The program shall have both a PreGED/academic component and a skills/job training component. Traditional Carnegie credit course work may be offered but is not required. Districts are encouraged to work with local postsecondary institutions, youth-serving entities, and/or businesses in developing the skills component.

5. The PreGED/Skills Options Program shall be operated on a separate site from the regular high school program. Exceptions will be considered based on space availability, transportation or a unique issue.

6. Students who complete only the skills section will be given a Certificate of Skills Completion.

7. Students will count in the October 1 MFP count.

8. Students will be included in School Accountability. While enrolled, they shall be required to take the ninth grade Iowa Test or alternate assessment. All programs will be considered Option 1 in accountability for alternative education purposes, and the score for every alternative education student at a given alternative school shall be returned to ("sent back") and included in the home-based school's School Performance Score (SPS).

NOTE: Refer to the Guidelines and Application Packet provided by the DOE for the requirements to establish a PreGED/Skills Option Program.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§2909. The Earning of Carnegie Units

A. Students enrolled in an alternative school/program shall be allowed to earn Carnegie credits when possible.

B. The integrity of the Carnegie credit shall not be diminished by any alternative school/program.

C. The Carnegie credits shall be granted by regular or special education teachers certified in the subject matter areas in which they are teaching.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

Chapter 31 Career and Technical Education (CTE)

§3101. Physical Environment and Equipment

A. The LEA shall provide appropriate physical environments for the instructional programs in Career and Technical Education (CTE) and maintain conditions that ensure the safety and health of students.

1. Heavy equipment laboratories, such as woodworking, metal working, multipurpose, automotive, and most machine laboratories, should have a minimum area of 75 square feet per student.

2. Light equipment laboratories, such as those used for teaching electricity, electronics, drafting, manufacturing, communications, etc., should have a minimum area of 50 square feet per student.

B. The LEA shall provide and maintain modern equipment for CTE programs.

1. An accurate inventory of equipment purchased with federal funds shall be maintained and shall include the funding source.

2. The use of this equipment shall be limited to the appropriate career and technical education program in accordance with regulations and codes found in state and federal guidelines.

3. Machines and tools shall be labeled, identifying the funding source, organized, guarded, color-coded, and ventilated in accordance with regulations and codes found in state and federal guidelines.

NOTE: Refer to Bulletin 1674 for safety and health requirements and EDGAR guidelines relative to CTE.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§3103. Requirements for Teachers

A. The CTE teacher shall hold a valid Louisiana teaching certificate or valid Career and Technical Trade and Industrial Education (CTTIE) Certificate that entitles the holder to teach in the career area of the actual teaching assignment.

B. CTE instruction shall integrate basic academic skills essential for students to achieve the desired CTE competencies that will enable the student to be successful on the job or at the postsecondary level.

C. CTE teachers and school counselors shall actively participate in the in-service programs contributing to professional improvement in their program area.

D. All agriculture teachers employed by an LEA shall teach a 12-month program for a 12-month budget period and shall be paid a salary at the same monthly rate as provided in the minimum salary schedule contained in R.S. 17:421.3. The agriculture program shall include, but not be limited to recognized co-curricular activities, to be supervised by agriculture teachers during the summer months such as those offered by the National Future Farmers of America (FFA) Organization or other appropriate organizations that provide summer occupational experiences, leadership programs, statewide judging contests, and youth conventions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17: 422.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§3105. Scheduling Career and Technical Courses

A. Where safety hazards exist, only one course shall be scheduled during a single class period under one CTE teacher.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§3107. Instructional Programs

A. For each CTE course, the teacher shall follow the BESE-approved minimum instructional content to be taught.

B. Instructional content of each course shall meet state and federal guidelines relative to unbiased treatment of race, sex roles, and religious and political beliefs.

C. Secondary students who are in the ninth through the twelfth grade shall be eligible for enrollment in CTE programs.

D. Junior high/middle (grades seven through eight) career and technical education programs shall meet the generic standards for senior high CTE programs, as well as specific standards for junior high approval in the CTE program area(s). Junior High School/Middle School CTE

programs shall be coordinated with the CTE program at the senior high school.

E. Both male and female students as well as students with disabilities shall be encouraged to participate in traditional and nontraditional CTE training to assist in eliminating bias and stereotyping CTE programs

F. The local governing authority of each LEA shall allocate annually to each secondary school in the LEA, in addition to any other funding, not less than \$50 per student enrolled at the school in an agricultural education program for use in providing adequate instructional materials and supplies for such students.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:181.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§3109. Carnegie Credit

A. Credit shall be awarded for successful completion of one-half to three Carnegie credits of career and technical education courses.

1. Credit for partial completion of two- or three-hour career and technical education courses may be granted for unusual or extenuating circumstances.

2. Request for partial credit because of unusual or extenuating circumstances shall be made in writing by the principal through the local superintendent to the Division of Family, Career and Technical Education of the DOE.

3. If granted, a copy of the written response shall accompany the student's transcript when it is sent to the Division of School Standards, Accountability and Assessment prior to graduation.

B. No career and technical education or contract course shall be offered for credit in any secondary school if it requires a license to practice the job, until the course has been approved by the licensing board designated to regulate that vocation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§3111. Career and Technical Education Student Organizations (CTSOs)

A. Activities of CTSOs should be offered as an integral part of the CTE instruction and be under the supervision of the instructional staff. The CTSOs for the respective CTE program areas are as follows.

1. Agriscience **C**National FFA Organization (FFA)
2. Business Education **C**Future Business Leaders of America (FBLA)
3. Health Occupations **C**Health Occupations Students of America (HOSA)
4. Family and Consumer Sciences **C**Family, Career, and Community Leaders of America (FCCLA)
5. Marketing Education **C**Association of Marketing Students (DECA)
6. Technology Education **C**Technology Student Association (TSA)
7. Trade and Industrial Education **C**SkillsUSA-VICA

B. Each local school governing authority shall develop procedures and policies for the approval of travel.

C. The LEA shall provide information and prepare necessary reports for each CTE program as required by the Division of Family, Career and Technical Education and

shall cooperate with the DOE in the evaluation of career and technical education programs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§3113. Work-Based Learning

A. Work-based learning programs shall provide opportunities for CTE students to receive on-the-job training and related classroom instruction in all CTE program areas. Work-based learning may include, but is not limited to, cooperative education and internships.

B. Cooperative education features an agreement between schools and employers to provide paid on-the-job training that relates to the areas of technical study in school and is based on objectives jointly developed by the school and the employers.

C. Internships are work-based activities where students work with an employer for a specified period of time to learn about a particular occupation or industry. The workplace activities involved with an internship could include special projects, a sample of tasks from different jobs, or tasks from a single occupation. An internship agreement is set up prior to the experience that outlines the expected objectives to be accomplished by the student. This may or may not include financial compensation.

D. Certification Requirements for Teachers

1. The cooperative education teacher-coordinator shall hold a valid teaching certificate entitling the holder to teach cooperative education in the CTE program or a valid CTTIE certificate to teach Trade and Industrial Cooperative Education.

2. The internship teacher-coordinator shall hold a valid teaching certificate in the CTE program that aligns with the student's internship worksite.

E. Scheduling Work-based Learning

1. Cooperative education programs shall incorporate classroom instruction and on-the-job training. The classroom phase shall include a total of five hours each week (one regular period per day) of CTE related classroom instruction. The on-the-job training phase shall include a minimum of 15 hours of job training per week for the entire year spanning from August through May. Teacher-coordinators shall be scheduled for classroom instruction and on-the-job supervision. Teacher-coordinators shall be scheduled for one cooperative education preparatory/supervision period for 10-45 students. Teachers with more than 45 students shall be scheduled for two cooperative education supervision periods.

2. Internships shall incorporate classroom instruction and on-the-job training. The classroom phase shall include a total of one hour each week of CTE related classroom instruction. The on-the-job training phase shall include a minimum of 10 hours of work-based learning per week for the entire year, spanning August through May. Teacher-coordinators shall be scheduled for classroom instruction and on-the-job supervision.

F. Facilities for Work-Based Learning

1. The LEA shall provide use of a telephone for teacher-coordinators of work-based learning education programs to use for placement/coordination/follow-up activities.

G. Teacher-Coordinator for Work-Based Learning

1. Reimbursement of travel expenditures for placement, supervision, and coordination activities of the work-based education programs shall be provided.

2. The teacher-coordinator and the employer shall cooperatively complete a training memorandum for both the classroom phase and the on-the-job training phase. The training memorandum and a list of skill competencies shall be prepared for each student. The list of competencies shall include skills and knowledge to be learned in the classroom and skills to be learned through on-the-job training.

3. Copies of the training memorandum and skills competencies shall be maintained in each work-based education student's folder and provided to the training sponsor (employer). The training memorandum is the application for an employment certificate for work-based education students. The employment certificate must be applied for on-line through the Department of Labor's website.

4. Each teacher-coordinator for work-based programs must submit a class organization report to the Division of Family, Career and Technical Education of the DOE.

5. The cooperative education teacher-coordinator shall visit each student on the job to observe the student at work, to confer with the employer, and to obtain a written evaluation of the student's progress at least four times during the school year.

6. The internship education teacher-coordinator shall visit each student on the job to observe the student at work, to confer with the employer, and to obtain a written evaluation of the student's progress at least two times during the school year.

7. The teacher-coordinator shall inform the employer of labor laws as they apply to minors engaged in work-based learning.

8. Orientation and pre-employment training, as well as safety training, shall be provided for each student prior to the student's placement with a program training sponsor (employer).

9. It is recommended that funding for extended employment beyond the school year be provided for each teacher-coordinator.

10. The program training sponsor (employer) shall complete a written evaluation of each student's on-the-job performance for each grading period.

11. The teacher-coordinator shall be responsible for determining the student's grade.

H. Work-based Learning Students

1. Cooperative education students shall be placed in appropriate, paid training stations within three weeks of the opening of school. Students not placed shall be rescheduled into non-cooperative courses.

2. Cooperative education students shall receive minimum wage or above for the hours spent in job training.

3. Internship students shall be placed in appropriate, paid or non-paid training stations within three weeks of the opening of school. Students not placed shall be rescheduled into non-internship courses.

4. Students in Cooperative Office Education, Cooperative Technology Education, Health Occupations Cooperative Education, and Family and Consumer Sciences Cooperative Education shall be seniors. Students in Cooperative Agriscience Education, General Cooperative

Education, Cooperative Marketing Education, and Trade and Industrial Cooperative Education (TICE) shall be juniors or seniors.

5. Internship students shall be juniors or seniors.

6. Work-based education students must successfully complete both the classroom and the on-the-job training phase to receive any credit. Students enrolled in Cooperative Education course shall not begin a work-based program at midterm.

NOTE: Refer to career and technical education course offerings for prerequisites and requirements for specific work-based programs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§3115. Procedures For Program Approval

A. Any new instructional program in Career and Technical Education, including regular, cooperative, pilot, or alternative, shall obtain approval from the Division of Family, Career and Technical Education before initiation.

B. In order to qualify for funding as an approved program:

1. instruction shall be based on the CTE Standard and Benchmarks and Model Course Guidelines;

2. the teacher shall maintain certification in the CTE program they are assigned to teach;

3. if a school offers an industry-based certification (IBC), the teacher of the IBC course(s) shall hold or work toward obtaining the industry certification. Teachers shall have a maximum of three years to obtain the certification;

4. each program area offered by a high school shall make available at least one area of concentration (sequence of courses) approved by BESE;

5. each program area shall offer courses in that program area for at least 50 percent of the school day;

6. where national program certification exists, the program shall meet or work toward obtaining the program certification. Schools shall have a maximum of three years to obtain the certification;

7. CTE instruction shall integrate career and technical education and academics to strengthen basic academic skills in communication, mathematics, science and social studies and develop critical thinking skills through practical applications in real-life situations;

8. each local educational governing authority should establish and maintain a local advisory council for CTE:

a. the membership of the local advisory council should be composed of representatives of the general public, including at least a representative of business, industry, and labor with appropriate representation of both sexes and racial and ethnic minorities found in the program areas, schools, community, or region that the local advisory council serves;

b. the duties of the local advisory council include advising the local education governing authority on:

i. current job needs; and

ii. the relevancy of programs (courses) being offered to meet the current job needs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§3117. Additional Program Approval Procedures

A. Agriscience/Agribusiness

1. The teacher shall assist each student in planning and developing a Supervised Agriculture Experience (SAE) program of one or more of the following types:

- a. ownership at the student's home, farm or business;
- b. placement at a farm or agribusiness other than that owned by the student;
- c. directed laboratory at a school facility such as school farm, greenhouse, garden, shop, forestry plot, food preservation center, etc.

2. The teacher shall supervise on a regular and periodic basis all SAE programs and shall assist the students in maintaining accurate records of their SAE programs.

3. The teacher shall participate in inservice activities by attending and taking part in the annual summer inservice held in conjunction with the area FFA leadership camp and any other DOE-sponsored inservice required of all agriculture teachers in the state.

4. The teacher shall organize and maintain an active chapter of the National FFA Organization, serving as its advisor, and will attend with two or more members the state convention and area leadership camp. Dues and special fees and reports will be submitted by the deadline set by the Louisiana Association of FFA. Each FFA chapter will participate in a minimum of four contests at the area or state level and will submit applications for at least three chapter or individual FFA awards. All FFA members will achieve the Greenhand Degree, and 80 percent or more of members enrolled in classes above the Agriscience I level will achieve the Chapter FFA Degree.

5. The teacher shall plan and submit a summer work schedule to the principal, local CTE supervisor, and the CTE section of the DOE. The teacher shall be responsible to the principal and local CTE supervisor for carrying out the schedule and submitting weekly summer activity or district reports documenting daily activities. The DOE shall conduct random monitoring visits to summer agriculture programs.

6. The teacher will submit an annual report to the CTE Section of the DOE documenting the completion of all required activities. The principal and supervisor will sign the report attesting to the fact that all requirements have been met.

B. Health Occupations

1. Health Occupations programs shall meet requirements of appropriate licensing or recognized accrediting agencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:185.2.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

Chapter 33 Home Study Programs

§3301. Definition

A. A home study plan for the purposes of these policies is a program in which an approved curriculum can be implemented under the direction and control of a parent or a tutor (i.e., court appointed guardian under Louisiana law).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:236.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§3303. Eligibility

A. Any student eligible by Louisiana law to attend Louisiana elementary or secondary schools shall be eligible to participate in a home study plan.

B. The home study plan does not replace the state homebound law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:236.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§3305. Application Process

A. Initial Application

1. An initial application must be made within 15 days after the beginning of the program to the DOE for review and recommendation to BESE.

2. The initial application shall be accompanied by a certified copy or a photocopy of the birth certificate of the child.

B. Renewal Application

1. A renewal application must be made by the first of October of the school year, or within 12 months of the approval of the initial application, whichever is later.

2. A renewal application shall be approved if the parents submit to BESE satisfactory evidence that the program offered a sustained curriculum of a quality at least equal to that of public schools at the same grade level.

C. Initial and renewal applications shall be approved at the discretion of BESE.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:236.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§3307. Instructor

A. A parent or tutor (i.e., court appointed guardian under Louisiana law) may be permitted to provide instruction in a home study plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:236.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§3309. Curriculum

A. The home study program shall have a sustained curriculum of a quality at least equal to that offered by public schools at the same grade level. The sustained curriculum must be substantiated in one of the following ways.

1. A packet of materials which shall be evaluated by the DOE for adequacy and which shall include such documents as:

- a. a complete outline of each of the subjects taught during the previous year;
- b. lists of books/materials used;
- c. copies of the student's work;
- d. copies of the student's standardized test results;
- e. statements by third parties who have observed the child's progress; or
- f. any other evidence of the quality of the program being offered.

2. Verification that the child took the LEAP 21 tests and scored at or above the state performance standards as established by BESE for his/her grade level; or

3. Verification that the child has taken the California Achievement Test or such other standardized examinations

as may be approved by BESE, including but not limited to tests approved for the Nonpublic School Testing Program, and the child has scored at or above his/her grade level for each year in home study; or

4. A statement from a teacher certified to teach at the child's grade level stating that the teacher has examined the program being offered and that in his/her professional opinion this child is being taught in accordance with a sustained curriculum of quality at least equal to that offered by public schools at the grade level, or in the case of children with mental or physical disabilities, at least equal to that offered by public schools to children with similar disabilities. The teacher evaluation is subject to review and approval by BESE.

B. In order to receive a Louisiana State equivalency diploma, the student must pass the GED test. Completion of a home study program does not entitle the student to a regular high school diploma.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:236.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§3311. Testing

A. A parent of a child in home study may request of the LEA superintendent or the State Superintendent, that the child be administered the LEAP 21 tests under the following conditions:

1. date of the test shall be on such dates as determined by the LEA superintendents or State Superintendent;
2. a fee of up to \$35 may be charged to cover actual costs of administering, scoring, and reporting the results of the tests;
3. the examination shall be administered with the same instructions and under similar conditions as provided to students enrolled in public schools;
4. a certified teacher shall administer the test;
5. the parent shall be provided the student's score and whether the student passed the examination by meeting the state performance standard for LEAP 21.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:236.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§3313. Admission or Readmission to the Public School System

A. The LEA shall have a written policy included in the local Pupil Progression Plan for admission or readmission of home study students to public schools. Refer to Bulletin 1566 Guidelines for Pupil Progression.

1. The policy shall provide for the screening and evaluation of such students and shall include examinations to determine the grade level at which students should be admitted.

2. The policy shall include the administration of the Louisiana Educational Assessment Program tests for the grades offered or required by BESE. Refer to the Guidelines for Nonpublic and Home Schooled Students Transferring to the Public School Systems: Participation in the LEAP 21.

B. At the grade levels in which state level tests are not available, the LEA will determine the placement and/or credits for the student through screening, evaluations, and/or examinations. These instruments may include any one of the following:

1. locally developed system-wide criterion-referenced test;
2. locally adopted commercial criterion-referenced test; or
3. locally adopted commercial norm-referenced test.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:236.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§3315. Due Process

A. The due process procedures for resolution of disagreements at the local level pertaining to the application and reauthorization of the home study plan shall follow the procedures established by BESE.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:236.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§3317. Cost

A. All reasonable costs directly attributed to the home study program shall be borne by the parents.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:236.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

Chapter 35 Montessori Schools

§3501. Approval of Training Courses

A. The Montessori Training course must accept students without regard to race, creed, or national origin.

B. The course, at a minimum, must include the following:

1. required reading of Dr. Montessori's works;
2. Montessori philosophy and theory;
3. child development;
4. practical life;
5. sensorial materials;
5. cultural subjects;
6. academic subjects;
7. twenty hours of observation of a Montessori class;

and

8. supervised practice sessions with Montessori apparatus.

C. The Montessori training course staff must have Montessori certification and five years Montessori classroom experience.

D. Students must pass both a written and practical examination.

E. Students must have worked on training requirements for a minimum of one academic school year.

F. It is desirable for the Montessori training course to have university affiliation.

G. The petitioner's request for approval must be submitted in writing to the president of the Louisiana Montessori Association (LMA) and to the DOE, Office of Quality Educators.

H. The LMA president shall acknowledge receipt in writing within two weeks and ask that a detailed description of the Montessori Training Course, including faculty, location, curriculum, and any pertinent requirements be sent to the LMA. Included with the above acknowledgment shall be a copy of Act 400 of 1982 and "Standards for Approval of Louisiana Montessori School."

I. The LMA president shall notify the LMA Training Approval Committee of the application and send a description of the Montessori Training Course to all committee members. The LMA president will submit a list of committee members and all applicable information to the DOE, Office of Quality Educators.

J. The committee will review the information and make a decision for approval or denial to the president of the LMA within two weeks.

K. The committee's approval or denial shall be brought before the general membership and their recommendation voted on within three months.

L. Notification of LMA approval or denial shall be sent to the DOE, Office of Quality Educators, within two weeks of the LMA decision, and reason for denial, if applicable. The DOE will review the LMA's decision and make recommendations to the Board for approval or denial and notify the petitioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3401.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§3503. Classification Categories

A. Classification categories for Montessori schools are:

1. **Approved** The school meets the standards of BESE established for a Montessori school.

2. **Provisional Approval** The school has one or more of the following deviations from standards:

a. lack of at least one Type A Montessori certified teacher provided that the school has a Type B certified Montessori teacher earning at least six semester hours per year toward a bachelor's degree;

b. an inadequate amount of proper Montessori instructional materials and equipment; and

c. for junior school, lack of a teacher who possesses a bachelor's degree and is certified in Montessori for the age level in which he serves, provided that such teacher is working toward Montessori junior certification.

3. **Probational Approval** The school has one or more of the following deviations from standards:

a. the school does not have at least a Type B certified Montessori teacher earning six semester hours toward a bachelor's degree;

b. lack of a certified Montessori teacher in each class;

c. lack of a teacher or teacher aide with a bachelor's degree in each class;

d. inadequate provision of indoor and/or outdoor space per child; and

e. for junior school and class, the school does not have a teacher possessing a bachelor's degree working toward Montessori certification.

4. **Unapproved**

a. any school that has not previously attained an approved classification and fails to comply with BESE standards, and

b. a probationally approved school that has not corrected the stated deficiencies within the time fixed by BESE.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3401; R.S. 17:3402.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§3505. School Approval Procedures

A. Any Montessori school seeking review by the DOE and approval by BESE must follow these procedures.

1. Application for approval shall be submitted on a Montessori Annual School Report form prescribed by the DOE.

2. One copy of the form shall be sent to the LMA, one copy submitted to the DOE and one copy kept on file in the school office.

3. A letter requesting an initial approval visit should be sent to the LMA and the DOE.

4. The form will be analyzed by both the LMA and the DOE.

5. After ascertaining that the school has met standards according to the written report, a visiting committee consisting of a minimum of five members (at least four Montessori teachers selected by the LMA and one DOE staff member) will be assigned to make an initial approval visit.

6. Montessori teachers shall serve on the visiting committee without compensation or reimbursement of expenses by the DOE.

7. After visitation by the committee, the school will be notified in writing of the recommendation made by the committee to the DOE for further recommendation to the BESE for assignment of a classification category.

8. A school denied approval by BESE shall be entitled to an appeal.

9. No hearing shall be granted unless a written appeal is received by the BESE within 30 days of the date of denial.

10. For continued state approval, Montessori schools shall submit a Montessori Annual School Report to the LMA and to the DOE for analysis and recommendation of a classification category to BESE.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3401.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§3507. Staff Requirements

A. Each school shall have at least one Type "A" certified Montessori teacher.

B. Each class shall have at least one Louisiana state certified Montessori teacher.

C. Each class shall have a teacher or teacher aide possessing a bachelor's degree.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3401; R.S. 17:3403.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§3509. Plant and Facilities

A. The physical plant must comply with state and local fire and health regulations and with applicable building codes. It shall be free of health and safety hazards.

B. The school shall be attractive, cheerful, orderly, clean, and in good repair to evoke in the children a positive response to beauty and to life and to satisfy their need for order.

C. **Indoor Requirements**

1. Low child-accessible shelving shall be in neutral or light colors for placement of materials, with adequate space for placement without crowding. Instructional materials of the same general classification should be placed together.

2. Walls shall be light or neutral colors to emphasize adequately the materials.

3. Lightweight, movable, child-sized furniture (tables, chairs) shall be available.

4. Flooring of a type that can be kept clean and safe shall be installed.

5. Rugs and mats shall be available and accessible to the children and there shall be an orderly place for their storage.

6. Adequate lighting (160 watts fluorescence for every 100 square feet of floor space is recommended) shall be in place.

7. Thirty square feet of working space per child or 35 square feet per child or total usable facilities shall be available to allow each child to move freely without interrupting the activities of others.

8. The environment shall be prepared, arranged, and equipped to structure the child's free movement and responsibility.

9. Child-accessible toilet and hand washing facilities adequate for the number of children shall be available.

D. Outdoor requirements:

1. Seventy-five square feet of outdoor space shall be available for each child in the group at any one time.

2. Outdoor space shall be easily accessible, safe, and protected and shall be fenced.

3. Outdoor equipment shall be safe and provide adequate opportunities for a variety of large muscle activities.

4. The outdoor area shall be pleasant and attractive with some gardening opportunities available.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3402.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§3511. Programs and Materials

A. Montessori junior school begins at six years of age and continues through the age of 14 years, approximately. Thus, the junior school encompasses the child's learning experiences from kindergarten to high school.

B. Freedom with responsibility leading to independent self-direction shall be a basic consideration of the school's instructional program.

C. The school shall be attractive, cheerful, orderly, clean, and in good repair to evoke in the children a positive response to beauty and to life, and to satisfy their need for order.

D. The school's instructional program shall incorporate the following types of activities:

1. language activities;

2. math activities;

3. cultural activities (geography, history, life science, art, music, dance, dramatics, construction, second language);

4. sensorial activities that sharpen the senses in preparation for accurate observation of the physical world; and

5. practical life activities that cultivate ability to care for self and environment.

E. The school must be equipped with Montessori materials in all basic areas, well maintained, and in good condition.

F. Instructional materials shall be self-teaching so that children can learn from them by self-discovery and voluntary repetition rather than by rote memorization of what someone tells them about the materials.

G. Children shall work independently once the materials are introduced.

H. The materials shall require active participation of the children so that the major part of their learning comes from concrete sensorial experience.

I. Materials shall reflect reality and nature so that children can organize their perceptions of the world accurately.

J. Instructional materials shall be open-ended so that it is possible for the children to learn more than one concept from each piece.

K. The materials shall isolate only one factor of difference to emphasize the particular attribute or concept.

L. The art materials shall be basically structured to allow children to create their own ideas after the teacher has initially demonstrated their use.

M. The Montessori materials shall be introduced sequentially.

N. The materials shall be attractive and of the best quality affordable to provide stimulation for new exploration or imagination.

O. They shall be clean, orderly, and in good repair.

P. The program shall provide annual standardized testing for Montessori junior students six years of age and above.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3402.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§3513. Scheduling

A. The academic school year shall be 180 days.

B. The class shall meet five days a week for approximately three hours a day or more to provide the necessary learning continuity.

C. Montessori junior classes of students six years of age and above shall meet a minimum of 180 days per year, five days a week, for a minimum of 28 hours per week, excluding lunch and recess.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3402.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§3515. Admissions and Enrollment

A. All admissions in a Montessori school shall be open to all persons of all races, creeds, or colors.

B. Early enrollment shall be encouraged, starting between the age of 2 1/2 to 3 1/2 years or earlier, to take advantage of early sensitive periods of learning.

C. Placement at the primary or junior level shall be determined by the child's achievement and level of development.

D. The classrooms shall have, if possible, a mixed age group spanning at least three years so that the children will have a variety of models from which to learn.

E. Attendance through kindergarten age shall be encouraged for maximum benefit of the program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3402.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§3517. Parent Interaction Requirements

A. The parents shall be allowed to observe the children at work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3402.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

Chapter 37 Glossary

§3701. Abbreviations/Acronyms

ADA Americans with Disabilities Act.
AP Advanced Placement.
BESE Board of Elementary and Secondary Education.
CPR Cardiopulmonary Resuscitation.
CTE Career/Technical Education.
CTSO Career and Technical Student Organizations.
CTTIE Career and Technical Trade and Industrial Education.
DECA An Association of Marketing Students.
DOE Department of Education.
FBLA Future Business Leaders of America.
FCCLA Family, Career, and Community Leaders of America.
FFA National FFA Organization.
GED General Educational Development Test.
GEE 21C Graduation Exit Examination for the 21st Century.
GLEs Grade-Level Expectations.
HOSA Health Occupations Students of America.
IDEA Individuals with Disabilities Education Act; The Special Education Law.
IAP Individualized Accommodation Program.
IB International Baccalaureate.
IBC Industry-based Certification.
IEP Individualized Education Program.
JROTC Junior Reserve Officer Training Corps.
LEA Local Education Agency.
LEAP 21C Louisiana Educational Assessment Program for the 21st Century
LHSAA Louisiana High School Athletic Association
LMA Louisiana Montessori Association
MFP Minimum Foundation Program
MPSC Minimum Proficiency Standards
NAEP National Assessment of Educational Progress.
NCLB No Child Left Behind.
OFAT Out-of-Field Authority to Teach.
SAE Supervised Agriculture Experience.
SAPE Substance Abuse Prevention Education.
TAT Temporary Authority to Teach.
TSAC Technology Student Organization.
TOPS Tuition Opportunity Program for Students.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6; R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

§3703. Definitions

Academic Endorsement Recognition for high school graduates who meet requirements listed in §2319.G which are above the requirements of a standard diploma.

Academically Able Student A student who is functioning at grade level as determined by the local school system. For special education students identified in accordance with Bulletin 1508 Pupil Appraisal Handbook, the IEP Committee shall determine the student's eligibility to receive foreign language instruction, provided the student is performing at grade level.

Accommodation Any technique that alters the academic setting or environment. An accommodation generally does

not change the information or amount of information learned. It enables students to show more accurately what they actually know.

Activity Class Any class such as band, theatre, or chorus for which a large class size is acceptable due to the nature of the instruction.

Adapted Physical Education Specially designed physical education for those exceptional students for whom significant deficits in the psychomotor domain have been identified according to Bulletin 1508 Pupil Appraisal Handbook, and who, if school-aged, are unable to participate in regular physical education programs on a full-time basis.

Adult Education Instruction below the college level for adults who have not been awarded a regular high school diploma and who are not currently required to be enrolled in school.

Advanced Placement Program The Advanced Placement Program of the College Board gives students the opportunity to pursue college-level studies while still in secondary school and to receive advanced placement and/or credit upon entering college.

Alternative School/Program An educational school/program that deviates from the standards stated in *Bulletin 741* in order to meet the specific needs of a particular segment of students within the community. There are two types of alternative schools/programs:

1. alternative within Regular Education: the curriculum addresses state standards; and upon graduation, students earn a state-approved diploma;

2. alternative to Regular Education: the curriculum does not address state standards; and upon graduation, students do not earn a state-approved high school diploma.

Alternative to Regular Placement Placement of students in programs that are not required to address BESE performance standards.

Annual School Approval An approval classification, based on the analysis of the Annual School Report, which is granted by the State Department of Education to each school.

Annual School Report The report of the implementation by a school of the standards/regulations of this bulletin. It is submitted annually to the DOE by each school.

Annual System Report The report of the implementation of the standards/regulations of this bulletin applicable to each LEA's central office. This report is submitted to the DOE by each LEA.

Approved School A public or nonpublic school that has an approval classification based upon a degree of compliance with standards/regulations prescribed by BESE.

Area of Concentration A coherent sequence of courses or field of study that prepares a student for a first job and/or further education and training. It includes four sequential related credits in a specific area plus two credits in a related field; one must be a basic computer course.

Articulated Credit Promotes a smooth transition from secondary to postsecondary education. It serves as a vehicle for high school students to earn postsecondary credit while enrolled in high school or upon entering postsecondary study.

Assessment The act or process of gathering data in order to better understand the strengths and weaknesses of a student learning as by observation, testing, interviews, etc.

Attendance (Half-Day) A student is considered to be in attendance for one-half day when he or she

1. is physically present at a school site or is participating in an authorized school activity; and
2. is under the supervision of authorized personnel for more than 25 percent but more than half (26-50 percent) of the student's instructional day.

Attendance (Whole-Day) A student is considered to be in attendance for a whole day when he or she:

1. is physically present at a school site or is participating in an authorized school activity; and
2. is under the supervision of authorized personnel for more than 50 percent (51-100 percent) of the student's instructional day.

BESE Policy A comprehensive statement that has the force and effect of law and that has been adopted by BESE to govern and to bring uniformity in education throughout Louisiana.

Career Major A coherent sequence of courses or field of study that prepares a student for a first job and/or further education and training. It includes four sequential related credits in a specific area plus two credits in a related field; one must be a basic computer course.

Career Technical Endorsement An endorsement beyond a regular diploma which has the purposes of enhancing a student's junior/senior years and providing a "credential" for postsecondary work with specific performance indicators that include industry-based certification and/or articulated credit and work-based learning.

Class Size The maximum enrollment allowed in a class or section.

Co-Curricular Activities Those activities that are relevant and supportive, that are an integral part of the program of studies in which the student is enrolled, and that are under the supervision and/or coordination of the school instructional staff.

Cooperative Education Programs that provide opportunities for career and technical education students to receive on-the-job training and related classroom instruction in the areas of Agriculture, Business, Health, Family and Consumer Science, Marketing, and Trade and Industrial Education programs.

Credit Exam An examination for the purpose of verifying a student has mastered a course taken under conditions that do meet the requirements for awarding Carnegie credit, such as teacher certification or time requirements.

Cultural Arts That subject area that includes music, arts and crafts, and the fine arts.

Cumulative Record A current record of academic, health, and other special types of information maintained for each student throughout his progress in school.

Education Records

1. those records, files, documents, and other materials which:
 - a. contain information directly related to a student; and
 - b. are maintained by an educational agency or institution or by a person acting for such agency or institution.
2. The term *education records* does not include:
 - a. records of instructional, supervisory, and administrative personnel and educational personnel ancillary

thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute;

- b. records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement;

- c. in the case of persons who are employed by an educational agency or institution but who are not in attendance at such agency or institution, records made and maintained in the normal course of business which relate exclusively to such person in that person's capacity as an employee and are not available for use for any other purpose; or

- d. records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment, except that such records can be personally reviewed by a physician or other appropriate professional of the student's choice

Elementary School A school composed of any span of grades kindergarten through the eighth grade.

Evaluation The in-depth process of review, examination, and interpretation of intervention efforts, test results, interviews, observations, and other assessment information relative to predetermined criteria.

Exceptional Child A child who is evaluated in accordance with §430-436 of Bulletin 1706, Regulations for Implementation of Exceptional Children's Act (R.S. 17:1941 et seq.) and who is determined according to Bulletin 1508, Pupil Appraisal Handbook, to have an exceptionality that adversely affects educational performance to the extent that special education is needed.

Extracurricular Activities Those activities which are not directly related to the Program of Studies, which are under the supervision and/or coordination of the school instructional staff, and which are considered valuable for the overall development of the student.

Fine Arts Those arts produced or intended primarily for beauty rather than utility, such as music, dance, drama, and the visual arts (*i.e.*, drawing, painting, sculpture).

Five-Year Educational Plan The plan developed by each student by the end of the eighth grade with the input of his/her family. The plan shall include a sequence of courses which is consistent with the student's stated goals for one year after graduation. Each student's Five Year Educational Plan shall be reviewed annually thereafter by the student, parents, and school advisor, and revised as needed.

Gifted Children or youth who demonstrate abilities that give evidence of high performance in academic and intellectual aptitude.

Grade-Level Expectations (GLE) The concepts and skills that students should master at the end of a grade or course.

Homebound Student A student who is enrolled in regular education and who, as a result of health care treatment, physical illness, accident, or the treatment thereof, is

temporarily unable to attend school, and who is provided instructional services in the home or hospital environment

Home Study Program (Approved) program in which an approved curriculum can be implemented under the direction and control of a parent or a tutor (i.e., court appointed guardian under Louisiana law).

Individualized Education Program (IEP) a written statement of specially designed instruction developed, reviewed and revised by a group of qualified education personnel and the parent/guardian for each student with a disability.

Industry-Based Certification a portable recognized credential (tangible evidence) that an individual has successfully demonstrated skill competencies on a core set of content and performance standards in a specific set of work related tasks, single occupational area, or a cluster of related occupational areas.

Instructional Time shall include the scheduled time within the regular school day devoted to teaching courses outlined in the Program of Studies. Instructional time does not include such things as recess, lunch, change of class time, and parent-teacher conferences.

Internship student internships are situations where students work for an employer for a specified period of time to learn about a particular industry or occupation. Students' workplace activities may include special projects, a sample of tasks from different jobs, or tasks from a single occupation. These may or may not include financial compensation.

Language Arts a broad subject area which includes reading, literature, speaking, listening, oral and written composition, English grammar, and spelling. (Foreign language may be included as part of the language arts program.)

Least Restrictive Environment the educational placement of an exceptional child in a manner consistent with the Least Restrictive Rules in 1448 of Bulletin 1706 Regulations for Implementation of the Exceptional Children's Act and R.S. 17:1941 et seq.

Local Educational Agency (LEA) a public board of education or other public authority legally constituted within the state either to provide administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, parish school district, or other political subdivision of the state. The term includes an educational service agency and any other public institution or agency having administrative control and direction of a public elementary or secondary school, including a public charter school that is established as an LEA under state law.

Locally Initiated Elective an elective course developed and approved by an LEA according to the standards in §2315 and reported to the DOE.

Minimum Standards for Career/Technical Education requirements that shall be met by local education governing agencies to be eligible for reimbursement in vocational education programs.

Modification any technique that alters the work product in some way that makes it different from the work required of other students in the same class. A modification generally does change the work format or amount of work required of students. It encourages and facilitates academic success.

Paraprofessional a person who is at least 18 years of age, possesses a certificate of good health signed by a physician, possesses an appropriate permit, and assists in the delivery of special educational services under the supervision of a special education teacher or other professional who has the responsibility for the delivery of services to exceptional children.

Paraprofessional Training Unit a setting that may be used for the self-help training (toilet-training, dressing skills, grooming skills, feeding skills, and pre-academic readiness activities) of severely and profoundly handicapped children or preschool children. A school-aged unit may be comprised of no more than six paraprofessionals. A preschool unit may be comprised of no more than four paraprofessionals. All units must be supervised directly by a certified special education teacher. Each paraprofessional must have a full quota of students (three) before an additional paraprofessional can be added to the unit. A paraprofessional training unit must be approved by the Office of Special Educational Services for the DOE in accordance with operational standards established by BESE.

Preschool no more than one year younger than the age established for kindergarten.

Principal in a school, the chief administrative officer certified by the State Department of Education, except in the case of Special Schools in which the superintendent may be designated as the chief school administrator.

Procedures specific actions or steps developed and required by the DOE to implement standards or regulations of BESE.

Proficiency Exam an examination taken by a student to demonstrate mastery of a course they have not taken.

Public School a school operated by publicly elected or appointed school officials and supported primarily by public funds.

Public School System Accreditation an accreditation classification, which is based upon the fifth-year, on-site verification of the Annual System and School Reports, and which is granted by the State Department of Education.

Pupil Appraisal Personnel professional personnel who meet the certification requirements for school personnel for such positions and who are responsible for delivery of pupil appraisal services included in §410-436 of Bulletin 1706 Regulations for Implementation of the Exceptional Children's Act, and R.S. 17:1941 et seq.

School Building Level Committee a committee of at least three school level staff members. It shall be comprised of at least the principal/designee, a classroom teacher, and the referring teacher. It is suggested that other persons be included, such as the school counselor, reading specialist, master teacher, nurse, parents, pupil appraisal personnel, etc. This committee is a decision-making group that meets on a scheduled basis to solve problems or address concerns from teachers, parents, or other professionals on individual students who are experiencing difficulty in school because of academic and/or behavior problems. In most cases, for enrolled students, it is only through the SBLC that a referral can be made to pupil appraisal services for an individual evaluation.

Senior Project a project that provides high school seniors with an opportunity to conduct in-depth research in an area of interest, and to demonstrate problem-solving, decision-

making, and independent learning skills. The project consists of a research paper, a portfolio of project activities, a product, and an oral presentation to a panel of teachers and community leaders. During this process, the student is advised by a teacher serving as a senior project advisor and a product mentor who has experience in the student's field of study.

Special Education Specially designed instruction, at no cost to the parent, to meet the unique needs of the student with an exceptionality.

Talented Children or youth who give evidence of measurable abilities of unique talent in visual and/or performing arts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6; R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:

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.

Interested persons may submit written comments until 4:30 p.m., April 11, 2005, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 741 Louisiana Handbook for School Administrators

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The estimated implementation cost is \$9384 for publication in the *LA Register*. The update to Bulletin 741 clarifies wording of policies, ensures all rules approved by the Board of Elementary and Secondary Education are included and includes current legislation.

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 not costs or economic benefits to persons or nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

Marlyn J. Langley
Deputy Superintendent
Management and Finance
0502#048

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Donation of Immovables (LAC 28:I.1303)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education approved for advertisement revisions to Chapter 13 (LAC 28:I). The revision of Title 28 of the *Louisiana Administrative Code* for a new policy regarding donation of immovables is recommended to align the *Louisiana Administrative Code* and Louisiana Department of Education policies with Board Special Schools and Special School District current practice, operation, and law. The revised policy language will overwrite previous policy contained in Section 1303.B.

Title 28 EDUCATION

Part I. Board of Elementary and Secondary Education Chapter 13. Board Special Schools and Special School District

§1303. Common Operational Matters

A. - A.4. ...

B. Donations of Immovables

1. Offers of unrestricted donations of immovables shall be evaluated by the commissioner of administration, who shall make a determination of whether or not it is in the best interest of the state to accept the donation.

2. Offers of restricted donations of immovables, not in contravention of the constitution or the law, may be accepted by the Board of Elementary and Secondary Education as deemed appropriate.

3. If property donated by a local school board ceases to be used by the state for any educational purposes whatsoever, then it will revert to the local school board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:4.1; R.S. 17:6; R.S. 17:7; R.S. 17:43; R.S. 17:1951.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 7:625 (December 1981), amended LR 16:297 (April 1990), LR 31:

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.

Interested persons may submit written comments until 4:30 p.m., April 11, 2005, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Donation of Immovables**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
There are no implementation costs to state or local governments for the proposed new policy regarding donations of immovables to Board Special Schools and Special School District.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There is no effect on revenue collections of state or local governments for the proposed new policy regarding donations of immovables to Board Special Schools and Special School District.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There are no costs and/or economic benefits to affected persons or groups for the proposed new policy regarding donations of immovables to Board Special Schools and Special School District.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There is no effect on competition and employment.

Marlyn J. Langley
Deputy Superintendent
Management and Finance
0502#036

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Donation of Movables, Finance and Property
(LAC 28:I.1303, 1705, and 1709)

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 Chapters 13 and 17 (LAC 28:I). The revision of Title 28 of the *Louisiana Administrative Code* to update language regarding donation of movables, finance and property is

recommended to align the *Louisiana Administrative Code* and Louisiana Department of Education policies with Board Special Schools and Special School District current practice, operation, and law.

**Title 28
EDUCATION**

**Part I. Board of Elementary and Secondary Education
Chapter 13. Board Special Schools and Special School District**

§1303. Common Operational Practices

A. Donations of Movables

1. Donations of movables and monies, that are made with the specification that the funds are not subject to deposit in the state treasury, and gifts to a Board Special School or to the Special School District appropriate to the students and/or programs may be accepted by the Board Special School Superintendents or the Special School District State Director. These donations are either restricted or unrestricted gifts which are managed in accordance with the following.

a. Restricted gifts are those donations of monies or movables designated for a specific purpose by the donor. Donations of monies or movables with a designated purpose are managed through the Board Special School or the Special School District State Director's office. Approval of acceptance of such gifts in consideration of the current needs of the students, various programs of the Board Special School and the Special School District, and the nature of the gift may be granted by the superintendent/state director.

b. Unrestricted gifts are those donations of movables or monies, that are made with the specification that the funds are not subject to deposit in the state treasury, donated for which no specific or restricted use or purpose is designated by the donor, i.e., for discretionary use by the donee.

i. Cash donations received without a designated purpose are managed through the Board Special School or the Special School District State Director's office. Upon notification/receipt of undesignated cash donations, the Board Special School and the Special School District State Director will consider the amount of the donation, the current needs of the students, various programs of the Board Special School and the Special School District and make a recommendation to the Board of Elementary and Secondary Education for use of the donations. Generally, priority consideration will be given to those needs for which no budgeted funds are available.

ii. Donations of material goods without a designated purpose will also be managed through the Board Special School or the Special School District State Director's office. Upon notification/receipt of undesignated material goods donations, the Board Special School superintendent, or the Special School District State Director, will consider the donation, current needs of the students, various programs of the Board Special Schools or the Special School District, the nature of the gift, and make a recommendation to the Board of Elementary and Secondary Education for use of the donations.

2. All gifts of monies are to be deposited in the appropriate account after approval of use by the Board of Elementary and Secondary Education.

3. All gifts of non-consumable movable property should be included on the appropriate Board Special School or the Special School District inventory in accordance with state property control procedures.

4. All gifts to a Board Special School and to the Special School District are to be officially acknowledged by each superintendent/state director, or designee, and a record of gifts is to be maintained by the Special School and the Special School District.

B. - B.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:4.1; R.S. 17:6; R.S. 17:7; R.S. 17:43; R.S. 17: 1951; Article VII, Section 3, of the Louisiana Constitution of 1974; R.S. 17:381.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 7:625 (December 1981), amended LR 16:297 (April 1990), LR 31:

Chapter 17. Finance and Property

§1705. Property; Insurance

A. Property Management

1. Easements, Servitudes, and Rights of Way. All requests for easements, servitudes, and/or rights of way must be accompanied by the document to be executed at the time the request is submitted to the board for approval.

2. Options. Any option of the board on land on which the date of expiration has passed shall be canceled and any such matter shall be brought to the immediate attention of the board by the State Superintendent of Education.

3. Property Management. Property management in any entity under the board's jurisdiction shall be in compliance with all applicable state and federal property laws and regulations.

B. Insurance

1. Agencies under the jurisdiction of the board shall comply with all regulations issued by the Division of Administration, Office of Risk Management.

2. Institutions under the jurisdiction of the board are to notify the fire marshal's office immediately in the case of all explosions and also in the case of fire when arson or some other unusual circumstance is suspected.

3. Partial losses or damages to property will be attended to immediately by the institution authorities and the state superintendent working in concert with the manager of the Office of Risk Management. In the case of total losses the same personnel mentioned above shall arrive at remedial measures, draw up a list of property destroyed, and submit them to the board for review.

4. Each entity under the jurisdiction of the board is to maintain a complete inventory showing the amount and type of all moveable equipment owned by the institution in accordance with applicable state and federal laws and regulations regarding property management.

5. The Division of Administration is requested to consult with the state superintendent prior to making a settlement on insurance or replacing of damaged buildings under the jurisdiction of the board.

6. No board entity shall purchase buses without the authority of the board.

7. All board employees excluding those hired under the provisions of a professional services or consulting contract shall be placed under workmen's compensation coverage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:4.1; R.S. 17:6; R.S. 17:7; R.S. 17:43; R.S. 17:1951; Article VII, Section 3, of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 6:543 (September 1980), amended LR 8:406 (August 1982), LR 13:563 (October 1987), LR 16:297 (April 1990), LR 31:

Chapter 17. Finance and Property

§1709. Budgets

A. - F. ...

G. Financial Relations with Students. Superintendents of BESE Special Schools and the Special School District State Director shall notify the Board of Elementary and Secondary Education and receive board approval for any fixed financial relations between the students and schools when these relationships affect the school's or institute's budget. The BESE Special School Superintendents report to the Special School District State Director, who reports to the State Superintendent of Education, who then notifies BESE and seeks BESE approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A); R.S. 17:7; R.S. 17:22.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 1:398 (September 1975), amended LR 1:541 (December 1975), LR 3:404 (October 1977), LR 14:789, 790 (November 1988), LR 16:297 (April 1990), LR 16:397 (May 1990), LR 20:646 (June 1994), LR 21:1329 (December 1995), LR 23:55 (January 1997), LR 24:296 (February 1998), LR 25:247 (February 1999), LR 31:

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.

Interested persons may submit written comments until 4:30 p.m., April 11, 2005, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Donation of Movables, Finance and
Property**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There are no implementation costs to state or local governments as a result of proposed revisions to Section 1303.A, Section 1705.A and B, and Section 1709.G of the BESE Administrative Code for Board Special Schools and Special School District, regarding donations and finance and property.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
OR LOCAL GOVERNMENTAL UNITS (Summary)**

There is no effect on revenue collections of state or local governments as a result of proposed revisions to Section 1303.A, Section 1705.A and B, and Section 1709.G of the BESE Administrative Code for Board Special Schools and Special School District, regarding donations and finance and property.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

There are no costs and/or economic benefits to affected persons or groups as a result of proposed revisions to Section 1303.A, Section 1705.A and B, and Section 1709.G of the BESE Administrative Code for Board Special Schools and Special School District, regarding donations and finance and property.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

There is no effect on competition and employment as a result of proposed revisions to Section 1303.A, Section 1705.A and B, and Section 1709.G of the BESE Administrative Code for Board Special Schools and Special School District, regarding donations and finance and property.

Marlyn J. Langley
Deputy Superintendent
Management and Finance
0502#035

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Environmental Quality
Office of Environmental Assessment**

Authorized Medical Physicist and Medical Event
(LAC 33:XV.703, 704, and 763)(RP040)

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 Radiation Protection regulations, LAC 33:XV.703, 704, and 763 (Log #RP040).

"Authorized medical physicist" is a new definition that the NRC requires the agreement states to include in the regulations. The new term was added to the Radiation Protection regulations in previous rulemaking, but was inadvertently left out of parts of LAC 33:XV.703 and 704. This rule corrects this oversight. Because all of the training and experience requirements for the authorized medical physicist have not yet been adopted into Part XV, eliminating the term "teletherapy physicist" may be premature, so this term is left in the regulations.

Additionally, a change to replace the term "misadministration" with "medical event" in LAC 33:XV.763 was missed in previous rulemaking and is corrected in this rule. The basis and rationale for this rule are to correct oversights in previous rulemaking in order to mirror the federal regulations.

This proposed 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. This proposed Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Title 33

ENVIRONMENTAL QUALITY

Part XV. Radiation Protection

Chapter 7. Use of Radionuclides in the Healing Arts

**§703. License Amendments and Provisions for
Research Involving Human Subjects**

A. - A.1. ...

2. before permitting anyone to work as an authorized user, authorized medical physicist, or authorized nuclear pharmacist under the license, except an individual who is:

a. - b. ...

c. identified as an authorized user, an authorized medical physicist, or an authorized nuclear pharmacist on a department, Nuclear Regulatory Commission, licensing state, or agreement state license that authorizes the use of radioactive material in medical use or in the practice of nuclear pharmacy, respectively; or

d. identified as an authorized user, an authorized medical physicist, or an authorized nuclear pharmacist on a permit issued by a department, Nuclear Regulatory Commission, licensing state, or agreement state specific licensee of broad scope that is authorized to permit the use of radioactive material in medical use or in the practice of nuclear pharmacy, respectively;

3. before changing a radiation safety officer, authorized medical physicist, or teletherapy physicist;

A.4. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), LR 24:2101 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2587 (November 2000), LR 30:1173 (June 2004), amended by the Office of Environmental Assessment, LR 31:

§704. Notifications

A. A licensee shall provide to the Office of Environmental Services, Permits Division, a copy of the board certification, the Nuclear Regulatory Commission or agreement state license, or the permit issued by a licensee of broad scope for each individual no later than 30 days after the date that the licensee permits the individual to work as an authorized user, an authorized nuclear pharmacist, or an authorized medical physicist in accordance with LAC 33:XV.703.A.2.

B. A licensee shall notify the Office of Environmental Services, Permits Division, by letter no later than 30 days after:

1. - 2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended LR 24:2101 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2587 (November 2000), LR 30:1173 (June 2004), amended by the Office of Environmental Assessment, LR 31:

§763. Training

A. - F.2.b.iii. ...

iv. using administrative controls to prevent a medical event involving the use of radioactive material; and

F.2.b.v. - O. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended LR 24:2106 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2590 (November 2000), LR 30:1186 (June 2004), amended by the Office of Environmental Assessment, LR 31:

A public hearing will be held on March 29, 2005, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room C111, 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 Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Free parking is available across the street in the Galvez parking garage when the parking ticket is validated by department personnel at the hearing.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by RP040. Such comments must be received no later than April 5, 2005, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of Environmental Assessment, Regulation Development Section, Box 4314, Baton Rouge, LA 70821-4314 or to fax (225) 219-3582 or by e-mail to judith.schuerman@la.gov. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of RP040. This regulation is available on the Internet at <http://www.deq.louisiana.gov/planning/regs/index.htm>.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374.

Wilbert F. Jordan, Jr.
Assistant Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Authorized Medical Physicist and Medical Event

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no expected implementation costs or savings to state or local governmental units by the proposed rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no estimated effect on revenue collections of state or local governmental units by the proposed rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups by the proposed rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition or employment by the proposed rule.

Wilbert F. Jordan, Jr.
Assistant Secretary
0502#060

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Environmental Quality Office of Environmental Assessment

Incorporation by Reference 2004
(LAC 33:I.3931; V.3099; IX.2301,
4901, and 4903; and XV.1517)(OS062*)

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 Environmental Quality regulations, LAC 33:I.3931; V.3099; IX.2301, 4901, and 4903; and XV.1517 (Log #OS062*).

This proposed Rule is identical to federal regulations found in 10 CFR 71, Appendix A (1/1/2004) & 40 CFR Parts 117.3, 136, 266, Appendices I-IX & XI-XIII, 302.4, 401, and 405-471 (7/1/2004), and 40 CFR Parts 429.11(c) in 69 FR 46045 (7/30/2004), 432 in 69 FR 54541-54555 (9/8/2004), and 451 in 69 FR 51927-51930 (8/23/2004), which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3550 or Box 4314, Baton Rouge, LA 70821-4314. No fiscal or economic impact will result from the proposed Rule; therefore, the rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

This proposed Rule incorporates by reference into LAC 33:Parts I, V, IX, and XV the corresponding regulations in 10 CFR 71, Appendix A, January 1, 2004 and 40 CFR Parts 117.3, 136, 266, Appendices I-IX and XI-XIII, 302.4, 401, and 405-471, July 1, 2004, and amendments to 40 CFR 429.11(c) in 69 FR 46045, July 30, 2004, 40 CFR 432 in 69 FR 54541-54555, September 8, 2004, and 40 CFR 451 in 69

FR 51927-51930, August 23, 2004. In order for Louisiana to maintain equivalency with federal regulations, the most current Code of Federal Regulations must be adopted into the LAC. This rulemaking is necessary to maintain delegation, authorization, etc., granted to Louisiana by EPA. This incorporation by reference package is being proposed to keep Louisiana's regulations current with their federal counterparts. The basis and rationale for this proposed rule are to mirror the federal regulations in order to maintain equivalency

This proposed 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. This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Title 33

ENVIRONMENTAL QUALITY

Part I. Office of the Secretary

Subpart 2. Notification

Chapter 39. Notification Regulations and Procedures for Unauthorized Discharges

Subchapter E. Reportable Quantities for Notification of Unauthorized Discharges

§3931. Reportable Quantity List for Pollutants

A. Incorporation by Reference of Federal Regulations. Except as provided in Subsection B of this Section, the following federal reportable quantity lists are incorporated by reference:

1. 40 CFR 117.3, July 1, 2004, Table 117.3. Reportable Quantities of Hazardous Substances Designated Pursuant to Section 311 of the Clean Water Act; and

2. 40 CFR 302.4, July 1, 2004, Table 302.4. List of Hazardous Substances and Reportable Quantities.

B. - Note #. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2194(C), 2204(A), and 2373(B).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), LR 20:183 (February 1994), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:944 (September 1995), LR 22:341 (May 1996), amended by the Office of the Secretary, LR 24:1288 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 29:698 (May 2003), LR 30:751 (April 2004), LR 30:1669 (August 2004), amended by the Office of Environmental Assessment, LR 31:

Part V. Hazardous Waste and Hazardous Materials

Subpart 1. Department of Environmental Quality Hazardous Waste

Chapter 30. Hazardous Waste Burned in Boilers and Industrial Furnaces

§3099. Appendices A, B, C, D, E, F, G, H, I, J, K, and L

Appendix A. Tier I and Tier II Feed Rate and Emissions Screening Limits For Metals

A. 40 CFR 266, Appendix I, July 1, 2004, is hereby incorporated by reference.

Appendix B. Tier I Feed Rate Screening Limits for Total Chlorine

A. 40 CFR 266, Appendix II, July 1, 2004, is hereby incorporated by reference.

Appendix C. Tier II Emission Rate Screening Limits for Free Chlorine and Hydrogen Chloride

A. 40 CFR 266, Appendix III, July 1, 2004, is hereby incorporated by reference.

Appendix D. Reference Air Concentrations

A. 40 CFR 266, Appendix IV, July 1, 2004, is hereby incorporated by reference, except that in regulations incorporated thereby, references to 40 CFR 261, Appendix VIII and 266, Appendix V shall mean LAC 33:V.3105, Table 1 and LAC 33:V.3099.Appendix E, respectively.

Appendix E. Risk-Specific Doses (10⁻⁵)

A. 40 CFR 266, Appendix V, July 1, 2004, is hereby incorporated by reference.

Appendix F. Stack Plume Rise [Estimated Plume Rise (in Meters) Based on Stack Exit Flow Rate and Gas Temperature]

A. 40 CFR 266, Appendix VI, July 1, 2004, is hereby incorporated by reference.

Appendix G. Health-Based Limits for Exclusion of Waste-Derived Residues

A. 40 CFR 266, Appendix VII, July 1, 2004, is hereby incorporated by reference, except that in regulations incorporated thereby, 40 CFR 261, Appendix VIII, 266.112(b)(1) and (b)(2)(i), and 268.43 shall mean LAC 33:V.3105, Table 1, 3025.B.1 and B.2.a, and LAC 33:V.2299.Appendix, Table 2, respectively.

Appendix H. Organic Compounds for Which Residues Must Be Analyzed

A. 40 CFR 266, Appendix VIII, July 1, 2004, is hereby incorporated by reference.

Appendix I. Methods Manual for Compliance with the BIF Regulations

A. 40 CFR 266, Appendix IX, July 1, 2004, is hereby incorporated by reference, except as follows.

A.1. - B. ...

Appendix J. Lead-Bearing Materials That May Be Processed in Exempt Lead Smelters

A. 40 CFR 266, Appendix XI, July 1, 2004, is hereby incorporated by reference.

Appendix K. Nickel or Chromium-Bearing Materials That May Be Processed in Exempt Nickel-Chromium Recovery Furnaces

A. 40 CFR 266, Appendix XII, July 1, 2004, is hereby incorporated by reference, except that the footnote should be deleted.

Appendix L. Mercury-Bearing Wastes That May Be Processed in Exempt Mercury Recovery Units

A. 40 CFR 266, Appendix XIII, July 1, 2004, is hereby incorporated by reference, except that in regulations incorporated thereby, 40 CFR 261, Appendix VIII shall mean LAC 33:V.3105, Table 1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 22:827 (September 1996), amended

by the Office of Environmental Assessment, Environmental Planning Division, LR 27:300 (March 2001), LR 27:2231 (December 2001), LR 28:996 (May 2002), LR 29:700 (May 2003), LR 30:751 (April 2004), amended by the Office of Environmental Assessment, LR 31:

Part IX. Water Quality

Subpart 2. The Louisiana Pollutant Discharge Elimination System (LPDES) Program

Chapter 23. Definitions and General LPDES Program Requirements

§2301. General Conditions

A. - E. ...

F. All references to the *Code of Federal Regulations* (CFR) contained in this Chapter shall refer to those regulations published in the July 1, 2004 CFR, unless otherwise noted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:199 (February 1997), LR 23:722 (June 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1467 (August 1999), LR 26:1609 (August 2000), LR 27:2231 (December 2001), LR 28:996 (May 2002), LR 29:700 (May 2003), LR 30:752 (April 2004), amended by the Office of Environmental Assessment, LR 31:

Chapter 49. Incorporation by Reference

§4901. 40 CFR Part 136

A. 40 CFR Part 136, Guidelines Establishing Test Procedures for the Analysis of Pollutants, July 1, 2004, in its entirety, is hereby incorporated by reference.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular 2074(B)(3) and (4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:958 (August 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1467 (August 1999), LR 26:1609 (August 2000), LR 27:2231 (December 2001), LR 28:996 (May 2002), LR 29:700 (May 2003), repromulgated LR 30:232 (February 2004), amended LR 30:752 (April 2004), amended by the Office of Environmental Assessment, LR 31:

§4903. 40 CFR Chapter I, Subchapter N

A. 40 CFR Chapter I, Subchapter N, Effluent Guidelines and Standards, Parts 401 and 405-471, July 1, 2004, and amendments to Section 429.11(c) in 69 FR 46045, July 30, 2004, Part 432 in 69 FR 54541-54555, September 8, 2004, and Part 451 in 69 FR 51927-51930, August 23, 2004, are hereby incorporated by reference.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:958 (August 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1467 (August 1999), LR 26:1609 (August 2000), LR 27:2232 (December 2001), LR 28:996 (May 2002), LR 29:700 (May 2003), LR 29:1467 (August 2003),

repromulgated LR 30:232 (February 2004), amended LR 30:752 (April 2004), amended by the Office of Environmental Assessment, LR 31:

Part XV. Radiation Protection

Chapter 15. Transportation of Radioactive Material

§1517. Incorporation by Reference

A. The department incorporates by reference 10 CFR Part 71, Appendix A, January 1, 2004.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104 and 2113.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:1270 (June 2000), amended LR 27:2233 (December 2001), LR 28:997 (May 2002), LR 29:701 (May 2003), LR 30:752 (April 2004), amended by the Office of Environmental Assessment, LR 31:

A public hearing will be held on March 29, 2005, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room C111, 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 Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Free parking is available across the street in the Galvez parking garage when the parking ticket is validated by department personnel at the hearing.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by OS062*. Such comments must be received no later than March 29, 2005, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of Environmental Assessment, Regulation Development Section, Box 4314, Baton Rouge, LA 70821-4314 or to fax (225) 219-3582 or by e-mail to judith.schuerman@la.gov. The comment period for this rule ends on the same date as the public hearing. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of OS062*. This regulation is available on the Internet at <http://www.deq.louisiana.gov/planning/regs/index.htm>.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374.

Wilbert F. Jordan, Jr.
Assistant Secretary

0502#061

NOTICE OF INTENT

Department of Environmental Quality
Office of Environmental Assessment

Insignificant Activities List
(LAC 33:III.501)(AQ244)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.501 (Log #AQ244).

This Rule revision corrects contradictory language regarding "insignificant activities" that do not need a permit. LAC 33:III.501.B.5 states in part, "Any activity for which a state or federal applicable requirement applies is not insignificant, even if the activity meets the criteria below." However, Part D of the Insignificant Activities List table allows for an exemption if "no enforceable permit conditions are necessary to ensure compliance with any applicable requirement." Based on the existing list of insignificant sources, it was determined that the language in Part D of the table more accurately reflects the intent of the list. For example, the first entry in the table (A.1) is external combustion equipment with a design rate greater than or equal to 1 million Btu per hour (MM Btu/hr), but less than or equal to 10 MM Btu/hr. Small gas-fired heaters typically fall into this category. Such equipment would be subject to the opacity provisions of LAC 33:III.1101.B and the particulate limitations of LAC 33:III.1313.C; however, enforceable permit conditions (e.g., restrictions on fuel use or hours of operation) are not necessary to ensure compliance with these requirements. The basis and rationale for this proposed rule are to correct contradictory language in the Insignificant Activities List.

This proposed 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. This proposed Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Title 33
ENVIRONMENTAL QUALITY
Part III. Air

Chapter 5. Permit Procedures
§501. Scope and Applicability

A. - B.4.b. ...

5. Insignificant Activities List. Those activities listed in the following table are approved by the permitting authority as insignificant on the basis of size, emission or production rate, or type of pollutant. By such listing, the permitting authority exempts certain sources or types of sources from the requirement to obtain a permit under this Chapter unless it is determined by the permitting authority on a site-specific basis that any such exemption is not appropriate. The listing of any activity or emission unit as insignificant does not authorize the maintenance of a nuisance or a danger to public health or safety. Any activity for which a federal applicable requirement applies is not insignificant, even if the activity meets the criteria below. For the purpose of permitting requirements under LAC

33:III.507, no exemption listed in the following table shall become effective until approved by the administrator in accordance with 40 CFR Part 70. For purposes of the insignificant activities listed in this Paragraph, aggregate emissions shall mean the total emissions from a particular insignificant activity or group of similar insignificant activities (e.g., A.1, A.2, etc.) within a permit per year.

Table with 1 column and 4 rows. Row 1: Insignificant Activities List. Row 2: [See Prior Text in A. - B.31]. Row 3: 32. generators, boilers, or other fuel burning equipment that is of equal or smaller capacity than the primary operating unit... Row 4: [See Prior Text in B.33 - C.5]. Row 5: D. Exemptions Based on Emissions Levels. Row 6: The owner or operator of any source may apply for an exemption from the permitting requirements of this Chapter for any emissions unit provided each of the following criteria are met...

1 State or federal regulations may apply.

B.6 - C.10. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011 and 2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:613 (July 1990), LR 17:478 (May 1991), LR 19:1420 (November 1993), LR 20:1281 (November 1994), LR 20:1375 (December 1994), LR 23:1677 (December 1997), amended by the Office of the Secretary, LR 25:660 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 28:997 (May 2002), amended by the Office of Environmental Assessment, LR 31:

A public hearing will be held on March 29, 2004, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room C111, 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 Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Free parking is available across the street in the Galvez parking garage when the parking ticket is validated by department personnel at the hearing.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ244. Such comments must be received no later than April 5, 2005, at

4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of Environmental Assessment, Regulation Development Section, Box 4314, Baton Rouge, LA 70821-4314 or to fax (225) 219-3582 or by e-mail to judith.schuerman@la.gov. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ244. This regulation is available on the Internet at <http://www.deq.louisiana.gov/planning/regs/index.htm>.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374.

Wilbert F. Jordan, Jr.
Assistant Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Insignificant Activities List**

- 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 as a result of this rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no effect on revenue collections of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There will be no costs and/or economic benefits to directly affected persons or non-governmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There will be no effect on competition; no effect on employment in the public and private sectors will be realized.

Wilbert F. Jordan, Jr.
Assistant Secretary
0502#057

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Environmental Quality
Office of Environmental Assessment**

Medical Events Occurring from X-Rays
(LAC 33:XV.102, 613, 615, 915, and 917)(RP038)

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 Radiation Protection regulations, LAC 33:XV.102, 613, 615, 915, and 917 (Log #RP038).

This Rule adds new sections to the radiation regulations for medical events occurring as a result of the

misadministration of X-rays to human beings in the healing arts. LAC 33:XV.613 and 915 are being added to mirror the changes adopted for radioactive materials in LAC 33:XV.712, for notifications of medical events involving the use of X-rays. LAC 33:XV.615 and 917 are being added to mirror the changes adopted for radioactive materials in LAC 33:XV.710, for notifications for embryos/fetuses of medical events involving the use of X-rays. In June 2004, the department adopted new regulations for medical use of radioactive materials in order to mirror the new federal regulations. The definition for misadministration was eliminated and a new definition for medical event was adopted. The new definition was taken verbatim from the NRC rule, which does not include misadministrations occurring from X-rays. The department regulates diagnostic X-ray energies and linear accelerators in LAC 33:XV.Chapters 6 and 9, while the NRC does not. Additionally, new federal reporting requirements were also adopted regarding dose to an embryo/fetus. These new requirements need to be adopted with regard to X-rays as well, for both diagnostic and therapeutic X-ray energies. The basis and rationale for this rule are to modify the adopted federal regulation definition of medical event for misadministrations of radioactive material and reporting requirements for a dose to an embryo/fetus to include not only radioactive material but also X-ray radiation, which is not regulated by the NRC but is regulated by the department.

This proposed 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. This proposed Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

**Title 33
ENVIRONMENTAL QUALITY
Part XV. Radiation Protection**

**Chapter 1. General Provisions
§102. Definitions and Abbreviations**

As used in these regulations, these terms have the definitions set forth below. Additional definitions used only in a certain chapter may be found in that chapter.

Medical Event Can an event that meets the criteria in LAC 33:XV.613.A, 712.A, or 915.A.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), LR 19:1421 (November 1993), LR 20:650 (June 1994), LR 22:967 (October 1996), LR 24:2089 (November 1998), repromulgated LR 24:2242 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2563 (November 2000), LR 26:2767 (December 2000), LR 30:1171, 1188 (June 2004), amended by the Office of Environmental Assessment, LR 31:44 (January 2005), LR 31:

**Chapter 6. X-Rays in the Healing Arts
§613. Notifications, Reports, and Records of Medical Events**

A. A registrant shall report any medical event, except for an event that results from patient intervention, in which the

administration of radiation involves the wrong patient, a procedure different than that which was authorized by the licensed practitioner of the healing arts, or a body site different from that which was authorized and intended to be exposed by the authorized X-ray procedure.

B. A registrant shall report any event resulting from intervention of a patient or human research subject in which the administration of radiation results or will result in unintended permanent functional damage to an organ or a physiological system, as determined by a physician.

C. All reports, notifications, and records shall be in accordance with LAC 33:XV.712.C, D, and F.

D. Aside from the notification requirement, nothing in this Section affects any rights or duties of registrants and physicians in relation to each other, the individual, or the individual's responsible relatives or guardians.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, LR 31:

§615. Report and Notification of a Dose to an Embryo/Fetus

A. A registrant shall report any dose to an embryo/fetus in excess of 50 mSv (5 rem) dose equivalent that is a result of a diagnostic X-ray procedure, in accordance with LAC 33:XV.710.A and C-F.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, LR 31:

Chapter 9. Radiation Safety Requirements for Particle Accelerators

Subchapter B. Radiation Safety Requirements for the Use of Particle Accelerators

§915. Notifications, Reports, and Records of Medical Events

A. A registrant shall report any medical event, except for an event that results from patient intervention, in which the administration of radiation results in one or more of the events described in LAC 33:XV.712.A or involves the wrong patient, wrong treatment site, or wrong mode of treatment.

B. A registrant shall report any event resulting from intervention of a patient or human research subject in which the administration of radiation results or will result in unintended permanent functional damage to an organ or a physiological system, as determined by a physician.

C. All reports, notifications, and records shall be in accordance with LAC 33:XV.712.C, D, and F.

D. Aside from the notification requirement, nothing in this Section affects any rights or duties of registrants and physicians in relation to each other, the individual, or the individual's responsible relatives or guardians.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, LR 31:

§917. Report and Notification of a Dose to an Embryo/Fetus

A. A registrant shall report any dose to an embryo/fetus in excess of 50 mSv (5 rem) dose equivalent that is a result

of a therapeutic X-ray procedure, in accordance with LAC 33:XV.710.A and C-F.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, LR 31:

A public hearing will be held on March 29, 2005, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room C111, 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 Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Free parking is available across the street in the Galvez parking garage when the parking ticket is validated by department personnel at the hearing.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by RP038. Such comments must be received no later than April 5, 2005, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of Environmental Assessment, Regulation Development Section, Box 4314, Baton Rouge, LA 70821-4314 or to fax (225) 219-3582 or by e-mail to judith.schuerman@la.gov. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of RP038. This regulation is available on the Internet at <http://www.deq.louisiana.gov/planning/regs/index.htm>.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374.

Wilbert F. Jordan, Jr.
Assistant Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Medical Events Occurring from X-Rays

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no expected implementation costs or savings to state or local governmental units as a result of the proposed rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no estimated effect on revenue collections of state or local governmental units by the proposed rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups by the proposed rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition or employment by the proposed rule.

Wilbert F. Jordan, Jr.
Assistant Secretary
0502#059

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Environmental Quality
Office of Environmental Assessment**

Air Regulations
(LAC 33:III.507, 1509, and 2305)(AQ248)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.507, 1509, and 2305 (Log #AQ248).

This proposed Rule corrects the unit of measurement for the concentration of hydrogen sulfide that is exempt from the control measures of flaring or combustion, standardizes Part 70 reporting procedures for upset provisions, and removes a reference to Chapter 31, which was repealed and replaced with an incorporation by reference. The basis and rationale for this Rule are to correct errors in the regulations.

This proposed 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. This proposed Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

**Title 33
ENVIRONMENTAL QUALITY
Part III. Air**

**Chapter 5. Permit Procedures
§507. Part 70 Operating Permits Program**

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

d. the owner or operator notified the permitting authority in accordance with LAC 33:I.Chapter 39.

3. - 5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011, 2023, 2024, and 2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:1420 (November 1993), LR 20:1375 (December 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2447 (November 2000), LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 29:698 (May 2003), LR 30:1008 (May 2004), amended by the Office of Environmental Assessment, LR 31:

**Chapter 15. Emission Standards for Sulfur Dioxide
§1509. Reduced Sulfur Compounds (New and Existing Sources)**

A. All refinery process gas streams or any other process gas stream that contains sulfur compounds measured as hydrogen sulfide shall be controlled by flaring or combustion. Units emitting less than 10 tons per year as hydrogen sulfide, or a concentration less than 400 ppmv

hydrogen sulfide, may be exempted from this Section by the administrative authority unless a more stringent federal or state requirement is applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 18:375 (April 1992), LR 24:2241 (December 1998), amended by the Office of Environmental Assessment, LR 31:

Chapter 23. Control of Emissions for Specific Industries¹

Subchapter C. Phosphate Fertilizer Plants

§2305. Fluoride Emission Standards for Phosphate Fertilizer Plants

A. - B. ...

C. Reserved.

D. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Environmental Assessment, LR 31:

¹ Regulation of emissions of volatile organic compounds for certain industries are presented in Chapter 21.

A public hearing will be held on March 29, 2005, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room C111, 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 Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Free parking is available across the street in the Galvez parking garage when the parking ticket is validated by department personnel at the hearing.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ248. Such comments must be received no later than April 5, 2005, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of Environmental Assessment, Regulation Development Section, Box 4314, Baton Rouge, LA 70821-4314 or to fax (225) 219-3582 or by e-mail to judith.schuerman@la.gov. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ248. This regulation is available on the Internet at <http://www.deq.louisiana.gov/planning/regs/index.htm>.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 110 Baratavia Street, Lockport, LA 70374.

Wilbert F. Jordan, Jr.
Assistant Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Air Regulations**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
There are no expected implementation costs or savings to state or local governmental units by the proposed rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There is no estimated effect on revenue collections of state or local governmental units by the proposed rule.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There are no estimated costs or significant economic benefits to directly affected persons or non-governmental groups by the proposed rule.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There is no estimated effect on competition or employment by the proposed rule.

Wilbert F. Jordan, Jr. Robert E. Hosse
Assistant Secretary General Government Section Director
0502#058 Legislative Fiscal Office

**NOTICE OF INTENT
Office of the Governor
Crime Victims Reparations Board**

Award Limits (LAC 22:XIII.503)

In accordance with the provisions of R.S. 46:1801 et seq., the Crime Victims Reparations Act, and R.S. 49:950 et seq., the Administrative Procedure Act, the Crime Victims Reparations Board hereby gives notice of its intent to promulgate rules and regulations to the awarding of compensation to applicants. There will be no impact on family earnings and family budget as set forth in R.S. 49:972.

**Title 22
CORRECTIONS, CRIMINAL JUSTICE AND LAW
ENFORCEMENT**

**Part XIII. Crime Victims Reparations Board
Chapter 5. Awards**

§503. Limits on Awards

A. - B.3. ...

C. Funeral Expenses

1. The board will reimburse up to a maximum of \$4,000 to cover reasonable expenses actually incurred for the funeral, burial or cremation.

2. Death and/or burial insurance taken out specifically for the purpose of burial must pay first. The amount of life insurance proceeds paid is no longer considered as a collateral source.

D. - M.2. ...

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 24:328 (February 1998), LR 25:26 (January 1999), LR 26:1019 (May 2000), LR 29:577 (April 2003), LR 31:

Interested persons may submit written comments on this proposed Rule no later than March 27, 2005, at 5 p.m. to Bob Wertz, Deputy Assistant Director, Commission on Law Enforcement and Administration of Criminal Justice, 1885 Wooddale Boulevard, Room 1230, Baton Rouge, LA 70806.

Lamarr Davis
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Award Limits**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
It is estimated that implementation of the proposed rule will annually increase expenditures by approximately \$19,000 in statutorily dedicated funds from the Crime Victims Reparations Fund which is derived from costs levied in state criminal courts. This figure was based on average awards made for funeral expenses from the last four years. The cost in subsequent years will depend on the number of applicants. This rule will increase current limits for funeral expenses which can be made to eligible victims of violent crimes. Printing costs for publication of these rules have been included in the total expenditure. Sufficient funds are available in the reparations fund to cover any possible expenditure at the state level.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
It is estimated that implementation of the proposed rule will increase revenue collections beginning in FY06 by approximately \$11,000; however, the exact amount is unknown. The dollar amount of federal grant funding allotted annually to the Louisiana Commission on Law Enforcement (LCLE) is contingent upon the dollar amount of state funds which the agency expends for crime victims in the preceding year; therefore, increased state expenditures will generate additional federal funding for the agency in the next fiscal year. Implementation of this rule should increase state expenditures beginning in FY06, thereby increasing federal revenue collections beginning in FY07.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
The proposed amendments will result in award increases up to \$4,000 to homicide victims of violent crimes.
- 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 proposed amendment.

Michael A. Ranatza
Executive Director
0502#020

H. Gordon Monk
Staff Director
Legislative Fiscal Office

**NOTICE OF INTENT
Office of the Governor
Division of Administration
Facility Planning and Control**

Capital Improvement Projects (LAC 34:III.Chapter 1 and 3)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the provisions of RS 39:121, The Division of Administration, Facility Planning and Control hereby gives notice of its intent to amend Title

34, Government Contracts, Procurement and Property Control, Part III. Facility Planning and Control, Chapter 1. Capital Improvement Projects, Subchapter A. Procedure Manual. These Rule changes are the result of discussions between Facility Planning and Control and the architectural and engineering communities and represent a balance of increased services and increased compensation. A summary of the changes follows:

- a. more accurately defines the completion of the design phase;
- b. allows the procurement of site information to be made a part of the designer's contract;
- c. eliminates the amend-to-bid-in provision and allows the owner to require the designer to redesign under certain circumstances if bids are under the cost estimate;
- d. incorporates a new formula for calculating the design fee;
- e. incorporates owner optional fee modifications based on project categories;
- f. increases designer responsibility for the cost of change orders;
- g. revises fee payment schedule to increase the proportion of the fee paid during construction;
- h. allows part of fee to be paid after completion of the One Year Warranty Phase;
- i. adds a general statement on designer responsibility for quality;
- j. emphasizes requirement for coordination of documents, disciplines and between named products and performance criteria;
- k. provides for alternate methods of document distribution;
- l. increases requirements for designer site visits particularly for principal consultants;
- m. allows the owner to require replacement of the designer' site representative;
- n. requires prompt response to requests for information;
- o. eliminates requirement for a statement of hourly rates for principals;
- p. allows for partial fee payments within phases;
- q. requires prompt payment to sub-consultants;
- r. revises wage rate requirements;
- s. adds 19th Judicial District as the venue for all legal action;
- t. revises insurance requirements to require professional liability insurance from the first day of the contract;
- u. revises appendix to conform to current statutes;
- v. makes miscellaneous reference and wording corrections and clarifications.

Title 34

GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL

Part III. Facility Planning and Control

Chapter 1. Capital Improvement Projects

Subchapter A. Procedure Manual

§101. Condition of the Contract

A. The Louisiana Capital Improvement Projects Procedure Manual for Design and Construction, 2004 Edition, herein referred to as the "procedure manual" or the "manual" and any amendments thereto, as published by

Facility Planning and Control, shall be a part and condition of the contract between owner and designer, herein referred to as the "contract."

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:473 (September 1982), amended LR 11:849 (September 1985), LR 31:

§103. Definitions

* * *

Consultants Individuals or organizations engaged by the owner or the designer to provide professional consultant services complementing or supplementing the designer's services. As applicable, consultants shall be licensed to practice in accordance with laws of the state of Louisiana. The owner shall engage or have the designer furnish as part of the designer's services the services of consultants which are deemed necessary for the project. Normal consultants are architects, landscape architects, civil, structural, mechanical and electrical engineers, and others required to provide the services required or implied by the scope of the project, compensation for which is included in designer's basic fee. Special consultants are those, other than the above, which the owner may approve to perform special services and for which compensation will be in accordance with §109.C.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:473 (September 1982), amended LR 11:849 (September 1985), LR 31:

§105. Owner-User Agency Responsibilities

A. - C.1.c. ...

d. the time schedule outlining anticipated completion dates of designated phases as described in §113 hereinafter and the anticipated period of construction. The time schedule for planning phases shall commence with the date of the pre-design conference and shall continue until delivery of all construction documents to the owner sufficiently complete, coordinated and ready to bid. The number of calendar days in the time schedule shall take into account review periods agreed to between designer and owner. Documents will be considered to be "sufficiently complete, coordinated and ready for bid" only if the advertisement for bid can be issued with no further revisions to the documents except minor corrections and/or additions that can be made by addenda. Corrections and/or additions that require reissuing drawings must be approved by facility planning and control. Design time will not necessarily end at the receipt of the initial construction documents phase submittal to facility planning and control. Any unreasonable re-submittals required to complete the documents will be included in the design time;

e. ...

2. The owner shall pay, in addition to the fee, the cost of site surveys described in §113.A.1.d. when deemed necessary by the designer and agreed to by the owner. These shall include, but not be limited to, a topographic survey prepared by a registered land surveyor and a geotechnical investigation prepared by a professional engineer.

D. The owner and the user agency shall examine all documents submitted by the designer and shall render decisions pertaining thereto, within the scheduled review period to avoid unreasonable delay in the progress of the designer's services.

E. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:473 (September 1982), amended LR 11:849 (September 1985), LR 31:

§107. Construction Budget (AFC)

A. ...

B. The designer shall be responsible for designing the project so that the base bid does not exceed the funds available for construction. The use of any alternate bids must be approved by the owner. The owner will take into consideration abnormal escalation in construction costs that can be substantiated.

C. At the completion of the program completion phase, as stated hereinafter in §113, the designer shall determine whether the funds available for construction are realistic for the project when compared with the completed program. At this point, or at any other submissions of probable construction cost by the designer, if such probable construction cost is in excess of funds available (AFC), the owner shall have the option to:

1. instruct the user agency to collaborate with the designer to revise the program so that it will be within the funds available for construction; such program revisions shall be done without additional compensation to the designer, except as provided in §113.C.4, hereinafter;

C.2. - D.1.c. ...

2. The lowest bona fide base bid is defined as the lowest base bid submitted by a licensed contractor, and not withdrawn in accordance with R.S. 38:2214, which complies in every respect with the bidding requirements of the contract documents.

E. When the lowest bona fide bid is below the amount available for construction and the designer has reduced the original program scope to reduce costs, and the lowest bona fide bid is less than 90 percent of the available funds for construction, the owner shall have the option to have the designer, without additional compensation, modify the construction documents as required to restore requirements of the program that were eliminated to reduce cost.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:474 (September 1982), amended LR 11:850 (September 1985), LR 31:

§109. Compensation

Note: Parts of §109 show new designations.

A. Compensation to be paid to the designer for services and reimbursable expenses shall be as follows.

1.a. The fee for basic services, as described in §113 hereinafter, shall be calculated as the product of the fee percentage, adjusted for inflation, and the amount Available For Construction (AFC), adjusted for inflation. The fee percentage shall be computed by the formula.

FEE PERCENTAGE = _____ 46.10 _____

Log (AFC (1975 BCI/Current BCI))

The fee shall be computed by the following formula:

FEE = FEE PERCENTAGE (AFC(1975 BCI/Current BCI)(Current CPI/1975 CPI)

Where "BCI" = Building Cost Index as published by Engineering News Record and "CPI" = Consumer Price Index as published by U.S. Department of Labor, Bureau of Labor Statistics.

b. Since the annual averages computed in December of the BCI and CPI are used, fee calculations are based upon the most current calendar year average of both indices. Should fee modifications occur during the course of the project, the BCI and CPI index factors used to calculate the original fee shall be used. If a project, through no fault of the Designer, is inactive for more than 24 months, the current BCI and CPI index factors shall be applied to the project once re-activated.

2. Compensation to be paid the designer may be appropriately modified by the owner prior to the selection of the designer for certain projects as follows.

a. Simple (.85 of basic compensation), to be determined by owner. Single use projects generally of utilitarian character without complication or detail. Buildings with a high degree of repetition may be included in this classification.

b. Average (1.00 of basic compensation), to be determined by owner. Projects of conventional character requiring normal attention to design and detail, including complete mechanical and electrical systems.

c. Medium Complex (1.1 of basic compensation), to be determined by owner. Projects of special character and/or function requiring an above average level of skill in design and containing more than ordinary requirements of scientific, mechanical and electrical equipment.

d. Complex (1.15 of basic compensation), to be determined by owner, projects of highly specialized design character and function requiring a high degree of design skill and requiring extensive, or special scientific, electronic, mechanical and electrical equipment and design expertise.

3. The owner may evaluate the scope, function, complexity, image and context of the project and adjust modifiers listed above.

a. A renovation factor of up to 1.25 of applied fees, to be established and set by the owner for each individual project, will be multiplied by the fee percentage to arrive at the fee for renovation projects, when determined by the owner to be justified. This fee shall include verifying existing conditions and/or any other additional work incidental to renovation projects. The renovation factor will be set in proportion to the additional work anticipated by the owner. The renovation factor will not be applied to re-roofing projects, except in unusual circumstances.

b. Full-Time Observation Services. An addition may be made to the basic fee for full time observation services during construction if determined by the owner to be warranted.

c. Duplicated work factor shall be subject to negotiation between the owner and designer on an individual project basis.

d. Multiple Contracts. If the owner determines that the best interest of the project is served by bidding and constructing the project under two or more separate contracts, the fee shall be established for each portion by application of the formula in Subsection A above.

e. If a project consists of more than one element, to be bid and constructed under one contract, then the AFC to be used in computing the fee under the formula in Subsection A above shall be the sum of the AFC's of each element.

f. Prefabricated Buildings. A fee to be established and set by the owner for each individual project, not to exceed that stated in Subsection A above.

B. Payment to the designer for additional services, defined in §113.C, shall be made on the basis of designer's direct personnel expense for performing such services multiplied by a factor of 3.0.

1. Direct Personnel Expense. The normal, straight-time direct salaries of all the designer's personnel engaged in the project (technical but not clerical). This shall also include the direct salaries of designer's consultants involved in the additional services.

2. Routine change orders which involve a small amount of effort will not involve extra compensation. Before the designer prepares a change order for which he feels he is entitled to extra compensation due to the extra effort involved, he shall so notify the owner and secure owner's approval to proceed with the change order. When final payment is made to the designer, all such change orders will be reviewed by the owner and the designer's contract will be amended to reflect extra compensation for the change orders which the owner has determined merit additional fee. The fee will be computed by increasing the contract award by the amount of change orders that qualify for additional fee as described above.

3. Designer shall prepare change orders caused by errors or omissions of the designer without additional compensation.

a. The designer shall be financially responsible for costs that result from errors and/or omissions that exceed an acceptable level pursuant to the standard of care as described in §113.A. The owner shall participate in the cost of omissions to the extent of the value received by the owner.

Errors Changes to the work caused by the designer for which the contractor is entitled to payment but for which the owner receives no value. Typically, these involve work that has been constructed and must be demolished and replaced.

Omissions Changes to the work caused by the designer for which the contractor is entitled to payment for which the owner receives value. Typically these involve work that must be added to contract with little or no change to the work that has been constructed.

4. Preparation of documents required for change orders for any cause shall not be started without owner's prior written approval.

C. Reimbursable expenses are in addition to the compensation for basic and additional services and include actual expenditures made by the designer, his employees or his professional consultants in the interest of the project as directed and authorized by the owner in writing prior to their incurrence.

1. The designer shall pay for the cost of printing construction documents for the owner's and user agency's use and for regulatory agencies' approvals. The owner will reimburse the designer the cost of printing and distribution of all other sets of construction documents, over and above the amount of the deposits on same retained by the designer. The plan distribution and deposits will be as described in the "Instructions to Designers." This will include necessary sets for the contractor to construct the project. If the designer proposes and the owner agrees to an alternative form of document distribution, such as an electronic format, the designer will be reimbursed the direct cost of this method in lieu of the reimbursement described above.

D. Designer will be paid for prolonged contract administration and observation of construction should the contract time, as may be extended, be exceeded due to no fault of the designer and liquidated damages are recommended by the designer. The amount of such payment shall be computed by dividing 20 percent of the basic total fee by the number of days construction time, as extended, and multiplying by the number of days of liquidated damages recommended by the designer.

E. Liquidated Damages: When the designer exceeds the established time schedule, as described in §105.C.1.d, including any extensions of time approved by the owner, then the amount of the fee shall, as liquidated damages, be reduced by an amount as stated in the advertisement for designer's selection, for each working day past the original or extended date that the designer has not delivered all construction documents to the owner sufficiently complete, coordinated and ready to bid. Completeness will be determined by the owner as described in §111.A.2 and §113.A.4.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:474 (September 1982), amended LR 11:850 (September 1985), LR 31:

§111. Payments to the Designer

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

Construction documents phase		60 percent
Bidding and contract phase		65 percent

b. - c. ...

i. Maximum of 1 percent (or \$2,000 maximum) of the designer's fee may be withheld from construction close-out payment until completion of the one year warranty inspection period.

2. A partial payment for the construction documents phase shall be made when the designer has completed 100 percent of the construction documents and has submitted these to the owner, the user agency, and the other required statutory agencies and the owner determines by inventory check and conformity with §113 that all required documents have been submitted, and are sufficiently complete, coordinated and ready to bid, then the designer shall be entitled to a payment of 70 percent of the fee for the construction documents phase. Should the owner's approval of the construction documents not be issued within 45 days of submittal due to no fault of the designer, then the designer

shall be paid an additional payment of 20 percent of the fee for the construction documents phase. The balance of the fee for this phase will be due upon the completion of review by owner and user, when corrections have been made, and when the project is approved for bidding. For projects with an AFC over \$10 million, interim payments up to 50 percent of the fee for the construction document phase may be made by agreement between the owner and the designer.

3. If any phase or phase payment is delayed through no fault of the designer, the owner and designer may negotiate a partial payment.

4. The designer shall promptly pay consultants. By signing the professional design services invoice, the designer agrees that all consultants will be promptly paid those amounts due them out of the amount paid to the designer within 30 days. Upon receipt of reasonable evidence of the designer's failure to pay consultants' amounts due them, the owner may withhold all or part of the designer's payment until he is satisfied that any amounts owed have been paid or otherwise settled.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:474 (September 1982), amended LR 11:851 (September 1985), LR 13:656 (November 1987), LR 31:

§113. Designer's Services

A. Basic Services. The designer's basic services consist of the phases described below and include the normal services of the designer and normal complementary or supplementary services of his consultants, and any other services included in the contract. Review documents of each phase shall be submitted to the owner and to the user agency for their approval. In addition, for the construction documents phase, review documents shall be submitted to regulatory agencies designated by the owner or required by law, for their approvals. Designer shall not proceed to any subsequent phase until the requisite written approvals are received and until authorized by the owner in writing to so proceed. All statements of probable construction cost shall be adjusted to the anticipated bid date of the project. The designer shall be responsible for compliance with all applicable codes. All items not specifically covered by codes shall be designed in accordance with the standards established by accepted professional groups or by industry standards for that specific item of work. The designer shall be responsible, to a reasonable standard of care, for the professional quality, technical accuracy and the coordination of all designs, drawings, specifications and other services furnished under this contract. The designer shall without additional compensation, correct or revise any errors or deficiencies in the designs, drawings, specifications, and other services.

1. - 1.c. ...

d. The designer shall obtain one or more proposals from registered land surveyors and geotechnical engineers when required for the project and recommend to the owner for his approval. The owner will contract directly for such services or may, with the agreement of the designer, include them in the designer's contract to be paid separately from the fee.

e. ...

2. Schematic Design Phase

a. Based on the approved completed program, funds available for construction, site location and time schedule, the designer shall prepare schematic design documents in such format and detail as required by the owner, consisting of drawings, outline specifications and other documents illustrating the general scope, scale and relationship of the project components for the written approval of the owner and the user agency. Detail submittal requirements are described in the instructions to designers.

b. ...

c. An analysis of requirements of the Louisiana Code for State-Owned Buildings as they relate to this project shall be prepared by the designer and submitted for review and approval. It shall be the responsibility of the designer to verify (with facility planning and control, the state fire marshal and the Department of Health and Hospitals) the latest edition of the codes and standards in effect for use on a project.

3. Design Development Phase

a. Based on the approved schematic design documents and any adjustments authorized by the owner in the program or the funds available for construction, the designer shall prepare, for approval by the owner, design development documents consisting of drawings, expanded outline specifications based on the construction specifications institute (CSI) format, and other documents to fix and describe the size and character of the entire project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be required. Detail submittal requirements are described in the instructions to designers.

b. The designer shall submit to the owner and user agency a statement of probable construction cost based on the construction specification institute format. This shall have back-up material and data in such format and detail as required by owner to support each of the divisions.

3.c. - 4.a. ...

i. Working Drawings. Dimensioned plans, elevations, sections, details and schedules of all architectural, landscaping, civil, structural, mechanical and electrical work in the project. Detail submittal requirements are described in the instructions to designers.

ii. Technical Specifications. The materials, processes or systems to be incorporated in the work, using the construction specifications institute format. State law prohibits the designer from closing specifications on any item in the specification except as provided for in R.S. 38:2290-2296 and in R.S. 38:2290.A. Any reason for closing specifications as provided for by law shall be brought to the attention of the owner in writing for review. Additional requirements for specifications are contained in the "Instructions to Designers" documents which will be furnished to the designer.

iii. Bidding and Construction Contract Forms. The owner will furnish to the designer policy requirements that the designer must include in his documents on the following: advertisement for bids, instructions to bidders, bid form, general conditions, supplementary general conditions, contract between owner and contractor, performance and

payment bond, noncollusion affidavit, and other forms used by the owner. The designer shall consult with the owner to determine if a prevailing wage determination from the secretary of labor should be included in the documents and obtain one if necessary.

iv. All documents shall be complete and coordinated. The designer is responsible for coordination of all documents and all disciplines. The designer is responsible for coordination between all named products and performance criteria.

b. The designer shall submit to the owner and user agency an updated statement of probable construction cost based on the construction specifications institute format with back-up material as described in Paragraph 3 above.

4.c. - 5.b.i.(c). ...

ii. plan deposits shall be in accordance with the owner's requirements and public bid law. Designers may recommend alternative methods of document distribution for approval by facility planning and control. Alternative methods must:

(a). provide equal or better access by potential bidders than the conventional method described in the instructions to bidders. For exclusively electronic plan distribution, prospective plan holders must be able to download files in a reasonable time and print paper copies, or have them printed, at a reasonable cost;

(b). comply with all provisions of public bid law particularly with R.S. 38:2212 A (1) (e).

5.c. - 6.d. ...

e. After the execution of the construction contract the owner will issue a notice to proceed to the contractor and will notify the designer to arrange for and conduct a pre-construction conference.

f. The designer and his principal consultants shall visit the project as often as necessary to become generally familiar with the progress and quality of the work and to determine if the work is proceeding in accordance with the contract documents. Such visits by the designer shall not be less than once per week when the work is in progress. The designer's principal consultants shall visit the project as often as necessary to become generally familiar with the progress and quality of the work related to their disciplines and to determine if that work is proceeding in general accordance with the contract documents. Such visits by the principal consultants shall not be less than an average of once per two weeks while the scope of their work is being performed. The designer shall not assume the role of his principal consultants in making site visits. In addition, project visits by both the designer and his principal consultants shall be made at key points in the construction process. On the basis of the designer's and principal consultants' on-site observations, he shall endeavor to guard the owner against defects and deficiencies in the work of the contractors. A written report of each visit to the site shall be prepared by the designer and each of his principal consultants and be transmitted to the owner, user agency, and contractor within seven calendar days after each visit.

g. The designer agrees that his designated representatives on the construction project shall be qualified by training and experience to make decisions and interpretations of the construction documents and such interpretations shall be binding upon the designer as if made

by him. All such decisions shall be confirmed in writing immediately with copies to the owner and contractor, conditioned that such decisions and interpretations shall not modify adversely the requirements of the contract documents. If at any time, the owner determines that the designated representative does not meet these qualifications, the designer shall promptly replace the representative. This Paragraph does not apply to the designer's full-time project representative.

h. - l. ...

m. The designer shall promptly review shop drawings, samples and other submissions of the contractor only for conformance with the design concept of the project and for compliance with the information given in the contract documents. The designer shall promptly respond to all requests for information from the contractor within a reasonable time period. The designer shall be held accountable as described in §109.B.3.

n. ...

o. R.S. 38:2241.1 entitled "Acceptance of Governing Authority," defines the procedures to be followed in accepting a project and gives the owner the discretion to make acceptance on either full completion or substantial completion. Upon completion of the work, or on substantial completion or for partial occupancy, as requested by the owner, the designer shall conduct an inspection of the project with the owner, the user agency and the contractor to determine if the contractor's work is in general accordance with contract documents. The designer shall prepare a list of items ("punch-list") for correction or completion together with an assigned dollar value.

6.o.i. - 7.a.i. ...

ii. two sets of record drawings (as-built) prepared by the designer, in an archival quality format for the owner and user agency files. The record drawings shall be prepared on the basis of information furnished by the contractor and the change orders and shall be reviewed with and approved by the contractor prior to submission. Designer shall require in the specifications that the contractor provide, as part of the operations and maintenance manual, all materials identified in the specifications ultimately installed on the project.

b. Designer shall review and approve completion of "punch-list" items remaining after acceptance and shall certify final payment to the contractor. If the designer does not find the work acceptable under the contract documents after the first onsite punch list review, the designer shall make one additional punch list review. If the work is still not acceptable, the designer, and each of the designer's principal consultants, shall be paid for their time at the project site, for each additional punch list review at the rate specified in the contract documents; to be withheld by the owner from the unpaid funds remaining in the construction contract sum.

c. Warranty Work. The designer shall be required to follow up on items to be corrected during the warranty period and shall arrange for and conduct an on site review of the project prior to expiration of the one-year warranty period and shall be required to inform the owner, user agency and contractor of any items to be corrected and shall inspect the project as required until the work is completed.

B. - C.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:475 (September 1982), amended LR 11:851 (September 1985), LR 31:

§127. Governing Law

A. The contract shall be governed by the laws of the state of Louisiana. The Nineteenth Judicial Court in and for the Parish of East Baton Rouge, State of Louisiana shall have sole jurisdiction in any action brought under this contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:478 (September 1982), amended LR 11:855 (September 1985), LR 31:

§129. Other Conditions

A. Insurance. Prior to the signing of the contract between owner and the designer, the designer shall furnish to the owner proof of coverage for the following.

1. Insurance. Professional liability insurance shall be required as per the owner's requirements on a project by project basis. Refer to Exhibit B of the contract for the extent of coverage required. Insurance will be required at the time of contract execution between the owner and the designer. Proof of coverage will be required at that time. No deductible shall be in excess of five percent of the amount of the policy.

2. Comprehensive general liability with minimum limits of \$500,000 per accident/occurrence.

3. Comprehensive automobile liability insurance with minimum limits of \$300,000 per accident/occurrence.

4. The designer shall provide a certificate of insurance as proof of workmen's compensation coverage.

B. - C. ...

D. Non-Binding Mediation

1. In an effort to resolve any conflicts that arise during or following the completion of the project, the owner and the designer agree that all disputes between them arising out of or relating to this agreement shall be submitted to non-binding mediation unless the parties mutually agree otherwise. If non-binding mediation is not successful, then arbitration is the only remedy available to all parties of the contract. Arbitration, mediation and/or any legal action resulting from this contract shall take place in East Baton Rouge Parish.

2. The owner and designer further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the Project and to require all independent contractors and consultants to likewise include providing for mediation as the primary method for dispute resolution between the parties to those agreements.

3. If this non-binding mediation fails to resolve any conflicts, then the following arbitration clause shall take effect. All claims, disputes and other matters arising from the contract shall, at the option of the owner, be decided by arbitration. To the extent possible, such arbitration proceedings shall be conducted in accordance with the construction industry association rules of the American Arbitration Association. Any such arbitration proceeding

shall, at the option of the owner, be consolidated with or joined to other arbitration proceedings between the owner and other persons or entities under contract with the state for the construction, repair or alterations of the project in question.

E. Fault. Time delays, cost overruns, design inadequacies or other problems with performance of the designer may result in the designer being held "at fault." The owner shall determine if the designer is to be held at fault as provided in R.S. 38:2313.B.(5).

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:478 (September 1982), amended LR 11:855 (September 1985), LR 13:656 (November 1987), LR 31:

Chapter 3. Louisiana Building Code for State-Owned Buildings

§300. Preface

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:479 (September 1982), repealed LR 31:

Subchapter A. Part IV of Chapter 8 of Title 40 of Louisiana Revised Statutes

§301. Declaration of Policy (R.S. 40:1721)

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:479 (September 1982), amended LR 11:855 (September 1985), repealed LR 31:

§303. Louisiana Building Code (R.S. 40:1722)

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:479 (September 1982), amended LR 11:855 (September 1985), repealed LR 31:

§305. Administration; Exceptions (R.S. 40:1723)

Repealed.

AUTHORITY NOTE: Promulgated in accordance with RS 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:479 (September 1982), amended LR 11:856 (September 1985), repealed LR 31:

§307. Building Permits and Occupancy Permits (R.S. 40:1724)

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:479 (September 1982), amended LR 11:856 (September 1985), repealed LR 31:

Family Impact Statement

1. The Effect of this Rule on the Stability of the Family. This Rule will have no 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 will have no 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 will have no effect on the functioning of the family.

4. The Effect of this Rule on Family Earnings and Family Budget. This Rule will have no effect on family earnings and family budget.

5. The Effect of this Rule on the Behavior and Personal Responsibility of Children. This Rule will have no 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 Rule. This Rule will have no effect on the ability of the family or local government to perform the function as contained in the proposed rule.

Interested persons may submit comments to William Morrison, Facility Planning and Control, P.O. Box 94095, Baton Rouge, LA 70804-9095. Written comments will be accepted through March 10, 2005

Jerry W. Jones
Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Capital Improvement Projects

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The most significant fiscal impact of the proposed rule change will come as a result of the designer fee increase. The proposed fee will, on average, be 40 percent higher than the current fee and will include a built in escalation factor that will allow the fee to keep pace with inflation.

The estimated cost to implement this program for the first year will be approximately \$977,000 from general obligation bonds and \$1,058,000 from other means of financing. These amounts are estimates based on the proposed capital outlay requests for 2005-2006 and the experience of Facility Planning and Control with the typical number of projects that are fully funded, receive adequate lines of credit and are acted on by user agencies. This is based on an project construction cost of approximately \$67,000,000.

In addition the State of Louisiana funds projects for local entities with general obligation bonds and these entities often use the same the fee structure for building construction design contracts as the state. This increase is very difficult to estimate because not all of these projects are building construction, they may or may not use the new state fee structure and it is difficult to determine which will be implemented during the fiscal year. However an intuitive estimate of this amount is approximately \$600,000.

The anticipated implementation date of this increase is July 1, 2005 and the budgets for projects included in 2005-2006 capital outlay bill for which designers have not been selected will have their budgets increased to accommodate the increased fee.

This increase is needed because the current fee structure is lagging behind inflation and because of increased work load imposed on designers by code changes such as the Americans with Disabilities Act and the energy codes and by the

increasing complexity caused by advancing technology. It will be compensated for by savings in construction costs and in improved quality of building construction as a result of increased and improved design services and transfer of workload from state project managers to the architects and engineers that are receiving the fee increase.

There may be an increase in costs to local governmental units because many of them use a fee structure that tracks that of the State. However, this is entirely voluntary and not encouraged by this office. The State has no control over this and has no way to predict or estimate the cost of this use.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be a substantial benefit to private sector architects and engineers that is commensurate with the cost to the implementation cost to the State. This will be balanced by an increase and improvement in the services provided by them.

Private sector architects and engineers will receive substantial benefit from the 40 percent average increase in their fees and the built in escalation factor that will allow them to keep pace with inflation. They will also benefit from the added fee modifications based on categories of projects. This represents a better distribution of fees according to workload but there should be no net cost increase for the agency. The amend-to-bid-in provision will be eliminated and should also result in no net cost increase to the agency. However, this may result in some increase in workload for designers because the agency will be able to require redesign at no additional fee for certain bid under runs. The change also recognizes that a designer's responsibility for his work is limited to a reasonable standard of care and that he is responsible for it. Other changes include more accurately defining the completion of the design phase, revises the fee payment schedule to increase the proportion of the fee paid during construction, increases emphasis on the requirements for coordination of documents, disciplines and between named products and performance criteria, increases requirements for designer site visits particularly for principal consultants, requires prompt payment to sub-consultants and revises insurance requirements that require professional liability insurance from the first day of the contract.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Competition will be increased. The proposed fee increase will attract a larger pool of designers competing for State building projects. This should result in improved quality of designer services.

A modest increase in employment can be expected. The increase in revenue for design firms should make it possible for them to hire additional employees.

Jerry W. Jones
Director
0502#070

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Board of Nursing

Licensure as Advanced Practice Registered Nurse
(LAC 46:XLVII.4507)

Notice is hereby given, in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.,

that the Board of Nursing (Board) pursuant to the authority vested in the board by R.S. 37:918, R.S. 37:920 intends to adopt Rules amending the Professional and Occupational Standards pertaining to Licensure as Advanced Practice Registered Nurse. The proposed amendments of the Rules are set forth below.

This Rule provides for technical changes regarding the restructuring of licensure requirements for APRNs; this repromulgation is not open for comment.

The text of this proposed Rule may be viewed in the Emergency Rule portion of this *Louisiana Register*.

Family Impact Statement

The Louisiana State Board of Nursing hereby issues this Family Impact Statement: The proposed Rule related to the board's appointing authority will have no known impact on family formation, stability, and autonomy, as set forth in R.S. 49:972.

Barbara L. Morvant
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Licensure as Advanced Practice Registered Nurse

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that no additional staff or operating expenses will be needed to implement these changes. The only cost for implementation is for the publication of the rule change in the *Louisiana Register* estimated to be approximately \$272 in fiscal year 2004/05.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no estimated effect on revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

In 2001, there were major changes to three sections of LAC 46:XLVII.4507 dealing with the Advance Practice Registered Nurse. Changes to this section regarding prescriptive authority and education were submitted and promulgated correctly, however due to renumbering in the section on licensure (4507) the current Section C, Licensure by Endorsement was inadvertently deleted. These proposed rules will restore the sections of the licensure rules regarding licensure by endorsement that was inadvertently taken out of the rules as published in 2001. This change will realign licensure with the current process of licensure by endorsement.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated effect on competition and employment.

Barbara L. Morvant
Executive Director
0502#033

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Hospital Licensing Standards
(LAC 48:I.Chapter 93)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to amend LAC 48:I.Chapter 93 as authorized by R.S. 40:2100-2115 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with 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 promulgated a Rule that established new regulations governing the licensing of hospitals (*Louisiana Register*, Volume 29, Number 11). The bureau now proposes to amend the November 20, 2003 Rule in order to clarify under what conditions outpatient services can be offered when the corresponding service is not offered on an inpatient basis. The bureau also proposes to bring requirements for obstetrical and newborn services in line with recommendations from the *National Guidelines for Perinatal Care*.

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. This proposed Rule has no known impact on family functioning, stability, or autonomy as described in R.S. 49:972

Title 48

PUBLIC HEALTH GENERAL

Part I. General Administration

Subpart 3. Licensing

Chapter 93. Hospitals

Subchapter O. Outpatient Services (Optional)

§9469. General Provisions and Organization

A. ...

B. Outpatient services shall be appropriately organized, integrated with, and provided in accordance with the standards applicable to the same service provided by the hospital on an inpatient basis.

1. Outpatient services shall be provided only under conditions stated in Subparagraph a or Clauses b.i - ii below.

a. Outpatient services may be provided by a hospital if that hospital provides inpatient services for the same area of service. For example, a hospital may provide psychiatric outpatient services if that hospital provides psychiatric services on an inpatient basis.

b. Outpatient services may be provided by a hospital that does not provide inpatient services for the same area of service only if that hospital has a written policy and procedure to ensure a patient's placement and admission into an inpatient program to receive inpatient services for that

area of service. The policy and procedure must ensure that the hospital is responsible for coordination of admission into an inpatient facility and must include, but not be limited to, the following:

i. the hospital personnel and/or staff responsible for coordination of placement and admission into an inpatient facility;

ii. the procedure for securing inpatient services for that patient.

2. For all outpatient services, there shall be established methods of communication as well as established procedures to assure integration with inpatient services that provide continuity of care.

3. When patients are admitted, pertinent information from the outpatient record shall be provided to the inpatient facility so that it may be included in the inpatient record.

C. - C.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 21:177 (February 1995), amended LR 29:2423 (November 2003), LR 31:

Subchapter S. Perinatal Services (Optional)

§9505. General Provisions

A. This Subchapter S requires that the level of care on the Obstetrical Unit and the Neonatal Intensive Care Unit shall be at the identical level except for freestanding children's hospitals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:2427 (November 2003), amended LR 31:

§9507. Obstetrical Services

A. These requirements are applicable to those hospitals which provide obstetrical and neonatal services.

B. Levels of Care Units

1. There are four established obstetrical levels of care units:

- a. Obstetrical Level I Unit;
- b. Obstetrical Level II Unit;
- c. Obstetrical Level III Unit; and
- d. Obstetrical Level III Regional Unit.

2. Obstetrical services shall be provided in accordance with current acceptable standards of practice as delineated in the current AAP/ACOG *Guidelines for Perinatal Care*. Each advanced level of care unit shall provide all services and personnel required of the lower designated units, as applicable, i.e., a Level III regional unit must meet the requirements of a Level I, II, and III.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:2427 (November 2003), amended LR 31:

§9509. Obstetrical Unit Functions

A. Obstetrical Level I Unit

1. General Provisions

a. Care and supervision for low risk pregnancies greater or equal to 35 weeks gestation shall be provided.

b. There shall be a triage system for identification, stabilization and referral of high-risk maternal and fetal conditions beyond the scope of care of a Level I Unit.

c. There shall be a written transfer agreement with a hospital which has an approved appropriate higher level of care.

d. The unit shall provide detection and care for unanticipated maternal-fetal problems encountered in labor.

e. Blood and fresh frozen plasma for transfusion shall be immediately available.

f. Postpartum care facilities shall be available.

g. There shall be capability to provide for resuscitation and stabilization of inborn neonates.

h. The facility shall have a policy for infant security and an organized program to prevent infant abductions.

i. The institution shall support breast-feeding.

j. The facility shall have data collection and retrieval capabilities including current birth certificate in use, and shall cooperate and report to appropriate supervisory agencies the requested data for review.

k. The institution shall have a program in place to address the needs of the family, including parent-sibling-neonate visitation.

l. The institution shall have written transport agreements. The transport service must be designed to be adequately equipped and have transport personnel with appropriate expertise for obstetrical and neonatal care during transport. Transport services shall meet appropriate local, state, and federal guidelines.

2. Personnel Requirements

a. Obstetrical services shall be under the medical direction of a qualified physician who is a member of the medical staff with obstetric privileges. The physician shall be board-certified or board-eligible in OB/Gyn or Family Practice Medicine. The physician has the responsibility of coordinating perinatal services with the pediatric medical director.

b. The nursing staff must be adequately trained and staffed to provide patient care at the appropriate level of service. The facility shall utilize the guidelines for staffing as provided by the AAP and the ACOG in the current *Guidelines for Perinatal Care* (see Table 2-1 in §9515, Additional Support Requirements).

c. The unit shall provide credentialed medical staff to ensure the capability to perform emergency Cesarean delivery within 30 minutes of the decision to operate (30 minutes from decision to incision).

d. Anesthesia, radiology, ultrasound, electronic fetal monitoring (along with personnel skilled in its use) and laboratory services shall be available on a 24-hour basis. Anesthesia services shall be available to ensure performance of a Cesarean delivery within 30 minutes as specified in Subparagraph c above.

e. At least one qualified physician or certified registered nurse midwife shall attend all deliveries, and at least one qualified individual capable of neonatal resuscitation shall attend all deliveries.

f. The nurse manager shall be a registered nurse (RN) with specific training and experience in obstetric care. The RN manager shall participate in the development of written policies, procedures for the obstetrical care areas, and coordinate staff education and budget preparation with

the medical director. The RN manager shall name qualified substitutes to fulfill duties during absences.

3. Physical Plant

a. Obstetrical patients shall not be placed in rooms with non-obstetrical patients.

b. Each room shall have at least one toilet and lavatory basin for the use of obstetrical patients.

c. The arrangement of the rooms and areas used for obstetrical patients shall be such as to minimize traffic of patients, visitors, and personnel from other departments and prevent traffic through the delivery room(s).

d. There shall be an isolation room provided with hand washing facilities for immediate segregation and isolation of a mother and/or baby with a known or suspected communicable disease.

e. Any new construction or remodeling of obstetrical units shall have a facility to enable Cesarean section deliveries in the obstetrical unit.

B. Obstetrical Level II Unit

1. General Provisions

a. The role of an obstetrical Level II unit is to provide care for most obstetric conditions in its population, but not to accept transports of obstetrical patients with gestation age of less than 32 weeks or 1,500 grams if delivery of a viable infant is likely to occur (see current *Guidelines for Perinatal Care*).

b. Conditions which would result in the delivery of an infant weighing less than 1,500 grams or less than 32 weeks gestation shall be referred to an approved Level III or Level III regional obstetrical unit unless the patient is too unstable to transport safely. Written agreements with approved obstetrical Level III and/or obstetrical Level III regional units for transfer of these patients shall exist for all obstetrical Level II units.

c. The unit shall be able to manage maternal complications of a mild to moderate nature that do not surpass the capabilities of a board-certified obstetrician/gynecologist.

d. The needed subspecialty expertise is predominantly neonatal although perinatal cases might be appropriate to co-manage with a perinatologist.

e. Ultrasound equipment shall be on site and available to labor and delivery 24 hours a day.

2. Personnel Requirements

a. The chief of obstetric services shall be a board-certified obstetrician with special interest and experience in maternal-fetal medicine. This obstetrician has the responsibility of coordinating perinatal services with the neonatologist or pediatrician in charge of the NICU.

b. A board-certified radiologist and a board-certified clinical pathologist shall be available 24 hours a day. Specialized medical and surgical consultation shall be readily available.

C. Obstetrical Level III Unit

1. General Provisions

a. There shall be provision of comprehensive perinatal care for high-risk mothers.

b. The unit shall provide care for the most challenging of perinatal conditions. Only those conditions requiring a medical team approach not available to the perinatologist in an obstetrical Level III unit shall be transported to an obstetrical Level III regional unit.

c. Cooperative transfer agreements with approved obstetrical Level III regional units shall exist for the transport of mothers and fetuses requiring care unavailable in an obstetrical Level III unit or that are better coordinated at an obstetrical Level III regional unit.

d. Obstetric imaging capabilities to perform targeted ultrasound examination in cases of suspected abnormalities shall be available.

e. Genetic counseling and diagnostics shall be provided.

f. Ongoing educational opportunities shall be provided through organized educational programs.

g. This unit shall provide for and coordinate maternal transport with obstetrical Level I and II units.

2. Personnel Requirements

a. The chief of the obstetrical unit providing maternal-fetal medicine at a Level III unit shall assure that appropriate care is provided by the primary attending physician for high-risk maternal patients and shall be:

i. board-certified in maternal-fetal medicine; or
ii. an active candidate for subspecialty certification in maternal-fetal medicine; or

iii. a board-certified obstetrician with experience in maternal-fetal medicine and credentialing to care for high-risk mothers.

b. If there is no hospital based maternal-fetal medicine specialist, a written consultative agreement shall exist through a formal transfer agreement with an approved obstetrical Level III or Level III regional obstetrical unit with a hospital based maternal-fetal medicine specialist. The agreement shall also provide for a review of outcomes and case management for all high-risk obstetrical patients for educational purposes.

c. A board-certified anesthesiologist with special training or experience in maternal-fetal anesthesia services at a Level III unit shall be the director of obstetrical anesthesia. Personnel, including CRNAs, with credentials to administer obstetric anesthesia shall be in-house 24 hours a day.

D. Obstetrical Level III Regional Unit

1. General Provisions

a. The unit shall have the ability to care for both mother and fetus in a comprehensive manner in an area dedicated to the care of the critically ill parturient.

b. These units shall provide for and coordinate maternal and neonatal transport with Level I, II and III NICU units throughout the state.

2. Personnel Requirements

a. The chief of the perinatal team at the Level III regional obstetrical unit must be a board-certified maternal-fetal medicine specialist.

b. An organized team dedicated to the care of the mother and fetus both in utero and after delivery shall be maintained. The team shall consist of, but not be limited to, specialists in the following areas:

i. maternal fetal medicine;

ii. cardiology;

iii. neurology;

iv. neurosurgery; and

v. hematology.

c. Subspecialists to provide expertise in the care of the critically ill parturient shall be on staff in the following areas:

- i. adult critical care;
- ii. cardiothoracic surgery;
- iii. nephrology;
- iv. pulmonary medicine;
- v. cardiology;
- vi. endocrinology;
- vii. urology;
- viii. neurosurgery;
- ix. infectious disease; and
- x. gastroenterology

d. Personnel qualified to manage obstetrical emergencies shall be in house 24 hours per day, including CRNA's, with credentials to administer obstetrical anesthesia.

e. A lactation consultant shall be on staff to assist breast-feeding mothers.

f. Registered nurses with experience in the care of high-risk maternity patients shall be in house on a 24-hour basis.

g. A nutritionist and a social worker shall also be available for the care of these patients.

D.3 - 7. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:2427 (November 2003), amended LR 31:

§9511. Neonatal Intensive Care

A. This §9511 is applicable to those hospitals which provide obstetrical and neonatal services.

B. Levels of Care

1. There are four established neonatal levels of care units:

- a. Neonatal Level I Unit;
- b. Neonatal Level II Unit;
- c. Level III NICU Unit; and
- d. Level III regional NICU.

2. Each advanced level of care unit shall provide all services and personnel required of the lower designated units, as applicable, i.e., a Level III regional unit must meet the requirements of a Level I, II and III.

B.3 – D.2. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:2428 (November 2003), amended LR 31:

§9513. Neonatal Unit Functions

A. Level I Neonatal Unit

1. General Provisions

a. The unit shall have the capability for resuscitation and stabilization of all inborn neonates in accordance with Neonatal Resuscitation Program (NRP) guidelines. The unit shall stabilize unexpected small or sick neonates before transfer to the appropriate advanced level of care.

b. The unit shall maintain consultation and transfer agreements with an approved Level II or III as appropriate, and an approved Level III regional NICU, emphasizing maternal transport when possible.

c. There shall be a defined nursery area with limited access and security or rooming-in facilities with security.

d. Parent-sibling-neonate visitation/interaction shall be provided.

e. There shall be the capability of data collection and retrieval.

2. Personnel Requirements

a. The unit's medical director and/or department chief shall be a physician that is board-certified or board-eligible in pediatric or family practice medicine.

b. The nurse manager shall be a registered nurse with specific training and experience in neonatal care. The RN manager shall participate in the development of written policies and procedures for the neonatal care areas, and coordinate staff education and budget preparation with the medical director. The RN manager shall name qualified substitutes to fulfill duties during absences.

c. Registered nurse to patient ratios will vary with patient needs; however, the range for Level I shall be 1:6-8. This ratio reflects traditional newborn nursery care. If couplet care or rooming-in is used, a registered nurse who is responsible for the mother should coordinate and administer neonatal care. If direct assignment of the nurse is also made to the nursery to cover the newborn's care, there shall be double assignment (one nurse for the mother-neonate couplet and one for just the neonate if returned to the nursery). A registered nurse shall be available at all times, but only one may be necessary as most neonates will not be physically present in the nursery. Direct care of neonates in the nursery may be provided by ancillary personnel under the registered nurse's direct supervision. Adequate staff is needed to respond to acute and emergency situations.

B. Neonatal Level II Unit

1. General Provisions

a. There shall be management of small, sick neonates with a moderate degree of illness that are admitted or transferred.

b. There shall be neonatal ventilatory support, vital signs monitoring, and fluid infusion in the defined area of the nursery. Ventilator care in a Level II unit shall be emergent care only.

c. Neonates born at a Level II facility with a birth weight of less than 1,500 grams shall be transferred to an approved Level III or Level III regional NICU unit unless a neonatologist is providing on-site care.

d. Neonates requiring transfer to a Level III or Level III regional NICU may be returned to an approved Level II unit for convalescence.

2. Personnel Requirements

a. A board-certified pediatrician with special interest and experience in neonatal care or a neonatologist shall be the medical director and/or department chief.

b. Registered nurse to patient ratios will vary with patient needs; however, the range for Level II shall be 1:3-4 (see Table 2-1 of §9515, Additional Support Requirements).

C. Level III NICU

1. General Provisions

a. There shall be a written neonatal transport agreement with an approved Level III regional unit. There shall be an organized outreach educational program.

b. If the neonatologist is not in-house, there shall be a pediatrician who has successfully completed the Neonatal Resuscitation Program (NRP) or one neonatal nurse practitioner in-house for Level III NICU patients.

c. For those hospitals that do not currently have sufficient numbers of neonatal nurse practitioners to meet the in-house requirements, a two-year grace period from the enactment of this revision of the Perinatal Plan shall be granted to provide sufficient time to hire or obtain training for additional neonatal nurse practitioners.

d. Direct consultation with a neonatologist shall be available 24 hours per day.

2. Personnel Requirements

a. The medical director of a Level III NICU shall be a board-certified pediatrician with subspecialty certification in neonatal medicine. The following exceptions are recognized:

i. Neonatologists who have successfully completed an accredited neonatal fellowship and shall achieve board certification within five years of completion of fellowship training.

ii. In the initiation of the initial Perinatal Plan, medical directors in existing units who were not neonatal-perinatal subboard-certified were granted a waiver by written application to the Office of the Secretary, Department of Health and Hospitals. This waiver is maintained as it applies only to the hospital where that medical director's position is held. The physician cannot relocate to another hospital nor can the hospital replace the medical director for whom the exception was granted and retain the exception.

b. Medical and surgical consultation shall be readily available and pediatric subspecialists may be used in consultation with a transfer agreement with a Level III regional NICU.

c. Registered nurse-to-patient ratios will vary with patient needs; however, the range for Level III NICU unit shall be 1:2-3 (see Table 2-1 of §9515, Additional Support Requirements).

D. Level III Regional NICU

1. General Provisions

a. Twenty-four hour per day in-house coverage shall be provided by a neonatologist, a second year or higher pediatric house officer, or a neonatal nurse practitioner. If the neonatologist is not in-house, there shall be immediate consultative ability with the neonatologist and the neonatologist shall be available to be on-site in the hospital within 30 minutes.

b. The unit shall have a transport team and provide for and coordinate neonatal transport with Level I, Level II units and Level III NICUs throughout the state. Transport shall be in accordance with national standards as published by the American Academy of Pediatrics Section on Neonatal and Pediatric Transport.

c. The unit shall be recognized as a center of research, educational and consultative support to the medical community.

2. Personnel Requirements

a. The medical director shall be a board-certified neonatologist.

b. Nurse to patient ratios will vary with patient needs; however, the range for Level III regional NICU shall be 1:1-2 (see Table 2-1 in §9515, Additional Support Requirements).

c. The unit shall have the following pediatric specialties/subspecialties on staff and clinical services available to provide consultation and care to neonates in a timely manner:

- i. anesthesia;
- ii. pediatric surgery;
- iii. pediatric cardiology;
- iv. pediatric neurology;
- v. pediatric hematology;
- vi. genetics;
- vii. pediatric nephrology;
- viii. pediatric endocrinology;
- ix. pediatric gastroenterology;
- x. pediatric infectious disease;
- xi. pediatric pulmonary medicine;
- xii. pediatric neurosurgery;
- xiii. orthopedic surgery;
- xiv. pediatric urologic surgery;
- xv. pediatric ophthalmology;
- xvi. pediatric ENT surgery;

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:2429 (November 2003), amended LR:31

§9515. Additional Support Requirements

A. A bioethics committee shall be available for consultation with care providers at all times.

B. The following support personnel shall be available to the perinatal care service of Level II, Level III and Level III regional obstetrical, neonatal, and NICU units:

1. at least one full-time medical social worker who has experience with the socioeconomic and psychosocial problems of high-risk mothers and fetuses, sick neonates, and their families (additional medical social workers may be required if the patient load is heavy);

2. at least one occupational or physical therapist with neonatal expertise;

3. at least one registered dietitian/nutritionist who has special training or experience in perinatal nutrition and can plan diets that meet the special needs of high-risk mothers and neonates;

4. qualified personnel for support services such as laboratory studies, radiologic studies, and ultrasound examinations (these personnel shall be readily available 24 hours a day); and

5. registered respiratory therapists or registered nurses with special training who can supervise the assisted ventilation of neonates with cardiopulmonary disease (optimally, one therapist is needed for each four neonates who are receiving assisted ventilation).

C. The staffing guidelines shall be those recommended by the current AAP/ACOG *Guidelines for Perinatal Care* (see Table 2-1 below).

Table 2-1. Recommended Registered Nurse/Patient Ratios for Perinatal Care Services	
Nurse/Patient Ratio	Care Provided
Intrapartum 1:2 1:1 1:1 1:2 1:1 1:1	Patients in labor Patients in second stage of labor Patients with medical or obstetric complications Oxytocin induction or augmentation of labor Coverage for initiating epidural anesthesia Circulation for Cesarean delivery
Antepartum/ Postpartum 1:6 1:2 1:3 1:4	Antepartum/postpartum patients without complications Patients in postoperative recovery Antepartum/postpartum patients with complications but in stable condition Recently born infants and those requiring close observation
Newborns 1:6-8 1:3-4 1:3-4 1:2-3 1:1-2 1:1 1:1 or greater	Newborns requiring only routine care Normal mother-newborn couplet care Newborns requiring continuing care Newborns requiring intermediate care Newborns requiring intensive care Newborns requiring multi-system support Unstable newborns requiring complex critical care

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:2429 (November 2003), amended LR 31:

§9517. Neonatal Unit Functions

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:2429 (November 2003), repealed LR 31:

§9519. Medical Staff

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:2430 (November 2003), repealed LR 31:

§9521. Staffing

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:2430 (November 2003), repealed LR 31:

Interested persons may submit written comments to Ben A. Bearden, 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 Tuesday, March 29, 2005 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Frederick P. Cerise, M.D., M.P.H.
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Hospital Licensing Standards**

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 programmatic fiscal impact for FY 04-05, 05-06 and 06-07. It is anticipated that \$1,700 (\$850 SGF and \$850 FED) will be expended in FY 04-05 for the state 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 04-05. It is anticipated that \$850 will be expended in FY 04-05 for the federal share of the expense for promulgation of this proposed rule and the final rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This rule proposes to amend hospital licensing standards to clarify the conditions under which outpatient services can be offered when the corresponding service is not offered on an inpatient basis (approximately 607 providers). The rule also proposes to bring the requirements for Obstetrical and Newborn services in line with the recommendations from the National Guidelines for Perinatal Care (published by the American Academy of Pediatrics, 5th Edition-approximately 90 hospitals). It is anticipated that implementation of this proposed rule will not have estimable costs and/or economic benefits for directly affected persons or non governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition or employment.

Ben A. Bearden
Director
0502#044

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Intermediate Care Facilities for the Mentally Retarded
Standards for Payment
(LAC 50:II.10307)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to amend LAC 50:II.10307 under 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 Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated a Rule in April 1999 that revised the standards for payment for intermediate care facilities for the mentally retarded (ICFs-MR) (*Louisiana Register*, Volume 25, Number 4). House Concurrent Resolution (HCR) 277 of the 2004 Session of the Louisiana Legislature urged and requested the department not to count official state holidays against the annual and therapeutic leave days provided for residents of ICFs-MR. In compliance with HCR 277, the bureau proposes to amend April 20, 1999 Rules to exclude official state holidays from the annual leave of absence limit.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability, or autonomy as described in R.S. 49:972. The proposed Rule will enhance the ability of residents of ICFs-MR to visit families during the holidays.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to amend the standards for payment for intermediate care facilities for the mentally retarded.

Title 50

PUBLIC HEALTH MEDICAL ASSISTANCE

Part II. Medical Assistance

Subpart 3. Standards for Payment

Chapter 103. Standards for Payment for Intermediate Care Facilities for the Mentally Retarded

Subchapter B. Participation

§10307. Payments

A.1. - 2. ...

B. Payment Limitations

B.1.a. - b.i. ...

ii. leave of absence. A temporary stay outside the ICF/MR provided for in the client's written Individual Habilitation Plan. A leave of absence will not exceed 45 days per fiscal year (July 1 through June 30), and will not exceed 30 consecutive days in any single occurrence. Certain leaves of absence will be excluded from the annual 45-day limit as long as the leave does not exceed the 30 consecutive day limit and is included in the written Individual Habilitation Plan. These exceptions are as follows:

(a). - (d). ...

(e). official state holidays.

NOTE: Elopements and unauthorized absences under the individual habilitation plan count against allowable leave days. However, Title XIX eligibility is not affected if the absence does not exceed 30 consecutive days and if the ICF-MR has not discharged the client.

B.1.c. - C.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 Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:682 (April 1999), LR 31:

Interested persons may submit written comments to Ben A. Bearden, 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 Tuesday, March 29, 2005 at 9:30 a.m. in the Department of

Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Frederick P. Cerise, M.D., M.P.H.
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Intermediate Care Facilities for the Mentally Retarded Standards for Payment

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 programmatic fiscal impact for FY 04-05, 05-06 and 06-07. It is anticipated that \$272 (\$136 SGF and \$136 FED) will be expended in FY 04-05 for the state 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 04-05. \$136 is included in FY 04-05 for the federal administrative expenses for promulgation of this proposed rule and the final rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This rule proposes to exclude official state holidays from the annual leave of absence limit for Intermediate Care Facilities for the Mentally Retarded (ICFs-MR) (approximately 450 providers). It is anticipated that implementation of this proposed rule will not have estimable costs and/or economic benefits for directly affected persons or non governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that there will be no effect on competition and employment as a result of the implementation of this proposed rule.

Ben A. Bearden
Director
0502#045

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Third Party Liability Newborn Notification Requirements

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following proposed Rule under 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 Administrative Procedure Act, R.S.49:950 et seq.

Act 269 of the 2004 Regular Session of the Louisiana Legislature mandated the establishment of reasonable requirements and standards for the enrollment of newborns as dependents for health insurance coverage by health insurance issuers. In addition, the Act mandated that health insurance issuers give 90 day written notice to the secretary of the Department of Health and Hospitals prior to the cancellation of health insurance coverage for nonpayment of any additional premium for a newborn child who may also be eligible for Medicaid medical benefits. In order to facilitate Act 269, the bureau proposes to adopt provisions governing newborn notification requirements for hospitals.

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. This proposed Rule would have a positive impact on family functioning as described in R.S. 49:972 in that it would strengthen the family's continuity of health care for the members of the household.

Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following provisions under the Third Party Liability Program governing newborn notification requirements for hospitals.

A. Definitions

Effective Date of Birth—the date of live birth of a newborn child.

Health Insurance Issuer—an insurance company, including a health maintenance organization as defined and licensed to engage in the business of insurance under Part XII of Chapter 2 of Title 22, unless preempted as a qualified employee benefit plan under the Employee Retirement Income Security Act of 1974.

Newborn Child—an infant from the time of birth through and until such time as the infant is well enough to be discharged from a hospital or neonatal special care unit to his or her home.

Third Party Liability (TPL) Notification of Newborn Child(ren) Form—the written form developed by the Department of Health and Hospitals that must be completed by the hospital to report the birth and health insurance status of a newborn child.

Qualifying Newborn Child—a newborn child who is medically fragile and meets the eligibility provisions for the Medicaid Program.

B. Notification Requirements

1. A hospital shall complete the Third Party Liability (TPL) Notification of Newborn Child(ren) Form to report the birth and health insurance status of a qualifying newborn child either delivered in their facility, delivered under their care, or transferred to their facility after birth. The notification shall only be completed when the hospital reasonably believes that the following entities would consider the child to be a qualified newborn:

a. the health insurance issuer that has issued a policy of health insurance under which the newborn child may be entitled to coverage; and

b. the Department of Health and Hospitals.

2. The TPL Notification of Newborn Child(ren) Form shall be completed by the hospital and submitted to any and

all applicable health insurance issuers within seven days of the effective date of the birth of a newborn child. Delivery of the notification form may be established via the U.S. Mail, fax, or email.

3. The TPL Notification of Newborn Child(ren) Form shall be sent to the Department of Health and Hospitals, Bureau of Health Services Financing, Third Party Liability/Medicaid Recovery.

4. This notification shall not be altered, in any respect, by the hospital and shall be in addition to any other notification, process or procedure followed by the hospital. The notification shall not be done in lieu of any other required notice, process or procedure established in any other rule, regulation, manual, or policy.

Interested persons may submit written comments to Ben A. Bearden, 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 Tuesday, March 29, 2005 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Frederick P. Cerise, M.D., M.P.H.
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: **Third Party Liability Notification Requirements**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that implementation of this proposed rule will result in an estimated cost avoidance to the state of \$132,957 for FY 04-05, \$656,368 for FY 05-06 and \$676,059 for FY 06-07. It is anticipated that \$340 (\$170 SGF and \$170 FED) will be expended in FY 04-05 for the state 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 implementation of this proposed rule will reduce federal revenue collections by \$328,790 for FY 04-05, \$1,538,843 for FY 05-06 and \$1,585,008 for FY 06-07. \$170 is included in FY 04-05 for the federal administrative expenses for promulgation of this proposed rule and the final rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This rule proposes to adopt provisions under the Third Party Liability Program governing newborn notification requirements (approximately 1,030 newborns per year) for hospitals. In conjunction with the Department of Insurance's (DOI) proposed rule pertaining to the Health Insurance Issuers (HII), the Department of Health and Hospitals (DHH) proposed rule initiates the process of fulfilling the spirit of ACT 269 through notification by the hospitals to HII and DHH of the newborn child. It is anticipated that implementation of this proposed rule will result in an estimated cost avoidance of

\$462,087 for FY 04-05, \$2,195,211 for FY 05-06 and \$2,261,067 for FY 06-07.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that there will be no effect on competition and employment as a result of the implementation of this proposed rule.

Ben A. Bearden
Director
0502#043

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Urine Drug Screening Laboratories

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing hereby proposes to repeal the following Rules as authorized by R.S. 49:1005. 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 adopted a Rule that governed the licensing and regulation of urine drug screening laboratories (*Louisiana Register*, Volume 17, Number 11). The bureau subsequently amended the November 20, 1991 Rule to establish different classes of laboratories (*Louisiana Register*, Volume 18, Number 2) and to establish an annual inspection fee and to amend time requirements and proficiency requirements for testing (*Louisiana Register*, Volume 20, Number 3). Act 901 of the 2004 Regular Session of the Louisiana Legislature repealed the authorization of the Department of Health and Hospitals to license urine drug screening laboratories. In compliance with Act 901, the bureau now proposes to repeal the November 20, 1991, February 20, 1992 and March 20, 1994 Rules governing the licensing and regulation of urine drug screening laboratories.

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. This proposed Rule has no known impact on family functioning, stability, or autonomy as described in R.S. 49:972

Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repeals the November 20, 1991, February 20, 1992 and March 20, 1994 Rules governing the licensing and regulation of urine drug screening laboratories.

Interested persons may submit written comments to Ben A. Bearden, 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 Tuesday, March 29, 2005 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Frederick P. Cerise, M.D., M.P.H.
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Urine Drug Screening Laboratories**

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 programmatic fiscal impact for FY 04-05, 05-06 and 06-07. It is anticipated that \$204 (\$102 SGF and \$102 FED) will be expended in FY 04-05 for the state 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 04-05. It is anticipated that \$102 will be expended in FY 04-05 for the federal share of the expense for promulgation of this proposed rule and the final rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This rule proposes to repeal the rules that govern the licensing and regulation of urine drug screening laboratories (approximately 23). The Department of Health and Hospitals currently receives \$600 in licensing fees per facility for an annual total of \$13,800 for the 23 facilities. The fees are used to offset the licensing survey process. It is estimated that this will result in the proposed rule being revenue/cost neutral. Implementation of this proposed rule will not have estimable costs and/or economic benefits for directly affected persons or non governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition and employment.

Ben A. Bearden
Director
0502#046

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Insurance
Office of the Commissioner**

Continuing Education Rule Number 10
(LAC 37:XI.717 and 723)

Under the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Commissioner of Insurance hereby gives notice that the Department's Rule Number 10 Continuing Education will be amended as required to bring it into compliance with R.S. 22:1193.K., enacted by Act No. 65 during the 2003 Regular Session of the Louisiana Legislature effective August 15, 2003. This amendment will enact section 717 H., (10.10. H.)

While reviewing Rule 10, in preparation for the above amendment, it was determined that an error occurred in the

prior amendment. (Notice of Intent published in the *Louisiana Register* Vol. 27, No. 10, page 1762, October 20, 2001 is correct.) Part of §723.B was inadvertently deleted during the promulgation publication, *Louisiana Register*, March 20, 2002, Volume 28, Number 3, page 511. The missing paragraph is being reinserted at this time. Please see Section 723 (10.13B.) below.

On March 30, 2005, beginning at 10:00 a.m., the Department of Insurance will hold a public hearing in the Poydras Hearing Room located at 1702 N. Third Street, Baton Rouge, LA 70802 to allow for public commentary concerning the proposed amendments to its existing Rule 10 as set forth below.

Title 37
INSURANCE
Part XI. Rules

Chapter 7. Rule Number 10 Continuing Education
§717. Rule 10.10. Measurement of Credit

A. - D. ...
E. Example of Continuing Education Credit Chart §717.D.

1. - 1.e. ...
f. F Division hours 4.

F. - G. ...

H. 1. Members of state or national professional associations may be granted 4 continuing education credits each year for actively participating in a state or national insurance association in one of the following methods:

a. attend a formal meeting of a state or national association where a formal business program is presented and attendance is verified in a manner consistent with the provisions of Rule 10;

b. serve on the board of directors or a formal committee of a state or national chapter of the association, and actively participate in the activities of the board or committee;

c. participate in industry, regulatory, or legislative meetings held by or on behalf of a state or national chapter of the association, or;

d. participate in other formal insurance business activities of a state or national chapter of the association.

2. In order to qualify for continuing education credit under this provision, members must attend at least 4 hours of qualified activities. Continuing education credit shall be given as one 4 hour increment each year from the association in a manner consistent with the provisions of Rule 10. The association shall be responsible for verifying attendance or participation of members for all events where continuing education credit is given under the terms of this provision. Attendance at meetings which are otherwise approved for continuing education credit do not qualify under the terms of this provision. The association shall file with the department for approval of a "course number" which shall be shown on all continuing education certificates issued under the terms of this provision.

3. Continuing education credit for membership in a bail bond association may only be applied towards renewal or reinstatement of a bail bond producer license. Continuing education credit for membership in a life, health and accident, property or casualty type association may only be applied towards renewal or reinstatement of a similar producer license.

4. Licensed producers may receive multiple member association certifications due to membership in more than one association; however, the licensee may only apply one membership certification to each renewal of his license. This certification must have been issued within the 2 year period immediately preceding renewal of the license.

AUTHORITY NOTE: Promulgated in accordance with Act 428 of the 1989 Louisiana Regular Legislative Session; R.S. 22: 1193; and the Louisiana Administrative Procedure Act, R.S. 49: 950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 16:858 (October 1990), amended LR 17:792 (August 1991), LR 20:1395 (December 1994), LR 28:510 (March 2002), LR 31:

§723. Rule 10.13. Credit for Individual Study Programs

A. ...

B. Insurance companies admitted to do business in the state of Louisiana, insurance trade associations as recognized by the commissioner, and accredited public or private colleges or universities may be recognized as providers of independent study courses. Other organizations recommended by the council and authorized by the commissioner may be approved as providers of independent study courses if they meet one of the following qualifications:

1. 5 years or more experience as a recognized insurance education provider of independent study courses;

2. accreditation by a national education organization. All individual study programs must be submitted for approval by the organization which complies or publishes the course materials. All individual study courses must be approved prior to being offered to licensees for continuing education credit. Any such course approval is not transferable to any other entity.

C. Continuing education credit for individual study programs must be applied to the current license renewal and may not be carried over to subsequent license renewals. No individual study program will be certified for more than 24 continuing education credit hours for property-casualty courses or 16 continuing credit hours for life-health courses.

D. Qualified individual study program providers (example: national publishing companies) may not contract their provider status to other CE providers. The integrity of materials and testing are the responsibility of the approved provider and must be maintained under their direct control. Local CE providers may act as vendors or marketing agents of approved individual study program providers as long as the provider controls the materials and testing.

AUTHORITY NOTE: Promulgated in accordance with Act 428 of the 1989 Louisiana Regular Legislative Session; R.S. 22: 1193; and the Louisiana Administrative Procedure Act, R.S. 49: 950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 16:859 (October 1990), amended LR 17:793 (August 1991), LR 20:1396 (December 1994), LR 28:511 (March 2002), LR 31:

Family Impact Statement

1. Describe the effect of the proposed Rule on the stability of the family. The proposed amendments to Rule 10 should have no measurable impact upon the stability of the family.

2. Describe the effect of the proposed Rule on the authority and rights of parents regarding the education and

supervision of their children. The proposed amendments to Rule 10 should have no impact upon the rights and authority of parents regarding the education and supervision of their children.

3. Describe the effect of the proposed Rule on the functioning of the family. The proposed amendments to Rule 10 should have no direct impact upon the functioning of family.

4. Describe the effect of the proposed Rule on family earnings and budget. The proposed amendments to Rule 10 should have no direct impact upon family earnings and budget; however, if working parents can earn C.E. credits through membership in professional associations they would join anyway, rather than paying to take courses to earn those credits, there could be some economic benefit to the family. The costs of the professional association membership and of continuing education courses would likely be business expenses rather than personal ones. On the other hand, one might say that families of the C.E. course providers might lose some income as a result of this amendment to Rule 10. It is unlikely that either segment would experience much, if any measurable impact on the family earnings and budget.

5. Describe the effect of the proposed Rule on the behavior and personal responsibility of children. The proposed amendments to Rule 10 should have no impact upon the behavior and personal responsibility of children.

6. Describe the effect of the proposed Rule on the ability of the family or a local government to perform the function as contained in the Rule. The proposed amendments to Rule 10 should have no impact upon the ability of the family or a local government to perform the function as contained in the Rule.

Persons interested in obtaining copies of the Rule or in making comments relative to these proposals may do so at the public hearing or by writing to Barry E. Ward, Department of Insurance, P.O. Box 94214, Baton Rouge, LA 70804-9214. Comments will be accepted through the close of business at 4:30 p.m. on March 31, 2005.

J. Robert Wooley
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Continuing Education Rule Number 10

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is not anticipated that the amendments to Rule 10 would result in any implementation costs or savings to local or state governmental units. No action of any kind is required of DOI, nor do the amendment(s) involve any fees, etc. payable to state or local governmental units. The proposed amendment allows producers to earn continuing education credit via membership/participation in state or national professional insurance associations.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed amendments to Rule 10 should have no effect on revenue collections of local or state governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Persons who are members of state or national professional insurance associations may earn continuing education credit each year for active participation (in several ways), as outlined in the proposed amendment(s), which would save them the cost of a course approved by DOI, administered by an approved continuing education vendor.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed amendments to Rule 10 should have no impact on competition and employment.

Chad M. Brown
Deputy Commissioner
0502#038

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Insurance Office of the Commissioner

Regulation 86 Dependent Coverage of Newborn Children in the Group and Individual Market (LAC 37:XIII.Chapter 111)

Under the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Insurance gives notice that it intends to enact Regulation 86 relating to procedures to provide health insurance coverage in the group and individual market to newborn children who meet the eligibility requirements as set forth in State Implementation Plan of Title XIX of the Social Security Act, and to specify the information that is to be provided by the health insurance issuer to the Secretary of the Department of Health and Hospitals as well as any health care provider or health care facility within certain prescribed time frames in order to allow these persons the option of making the payment of the incremental increase in the premium applicable to the health insurance for the newborn child, and to provide for sanctions.

Title 37

INSURANCE

Part XIII. Regulations

Chapter 111. Regulation 86 Dependent Coverage of Newborn Children in the Group and Individual Market

§11101. Authority

A. This regulation is issued pursuant to the authority vested in the commissioner under the provisions of R.S. 49:953 of the Administrative Procedure Act, R.S. 22:3 and 22:250.2(E)(2)(b) and (c), and R.S. 22:250.4.F, and 22:250.11.E and 22:250.15.A, regarding the coverage of a newborn child as a dependent in the group and individual health insurance market and to provide for related matters.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 to implement and enforce the provisions of R.S. 22:250.2.E.(2)(b) and (c), and 22:250.4.F, and 22:250.11.E, and 22:250.15.A of Part VI-C of Chapter 1 of Title 22 of the Louisiana Revised Statutes of 1950, as amended.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

§11103. Purpose

A. The purpose of this regulation is to establish reasonable requirements and standards for the processing of such coverage by health insurance issuers that assures

compliance with state requirements under Title 22 of the Louisiana Revised Statutes of 1950, as amended. More specifically, this regulation is necessary to implement and enforce the provisions of R.S. 22:250.2.E.(2)(b) and (c), and R.S. 22:250.4.F, and 22:250.11.E and 22:250.15.A of Part VI-C of Chapter 1 of Title 22.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 to implement and enforce the provisions of R.S. 22:250.2.E.(2)(b) and (c), and 22:250.4.F, and 22:250.11.E, and 22:250.15.A of Part VI-C of Chapter 1 of Title 22 of the Louisiana Revised Statutes of 1950, as amended.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

§11105. Applicability and Scope

A. Except as otherwise specifically provided, the requirements of this regulation shall apply to health insurance issuers, including health maintenance organizations, as required pursuant to R.S. 22:2001 et seq., of the Louisiana Revised Statutes of 1950, as amended.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 to implement and enforce the provisions of R.S. 22:250.2.E.(2)(b) and (c), and 22:250.4.F, and 22:250.11.E, and 22:250.15.A of Part VI-C of Chapter 1 of Title 22 of the Louisiana Revised Statutes of 1950, as amended.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

§11107. Definitions

A. As used in this regulation, these terms shall have the following meaning.

Cancellation for Nonpayment of Premium—the cancellation of coverage for a newborn child who was added as a dependent due to the nonpayment of the applicable premium adjustment for the additional coverage for the newborn child within the time frames established by law or in this regulation.

Effective Date of Birth—the date of the moment of live birth of a newborn child.

Eligibility Provisions—a newborn child who meets the requirements set forth in the State Plan Medical Assistance under Title XIX of the Social Security Act.

Health Care Facility—a facility or institution providing health care services including, but not limited to, a hospital (specifically including a neonatal special care unit) or other licensed inpatient center, ambulatory surgical or treatment center, diagnostic, laboratory, or imaging center, or rehabilitation or other therapeutic health setting.

Health Care Provider—a physician or other health care practitioner licensed, certified or registered to perform specified health care services consistent with state law.

Health Insurance Issuer—an insurance company, including a health maintenance organization as defined and licensed to engage in the business of insurance under Part XII of Chapter 2 of Title 22 of the Louisiana Revised Statutes, unless preempted as a qualified employee benefit plan under the Employee Retirement Income Security Act of 1974.

Newborn Child—an infant from the time of birth through and until such time as the infant is discharged from a health care facility to his or her home.

Non-Qualifying Newborn Child—a newborn child who does not meet the eligibility requirements of the State Plan Medical Assistance under Title XIX of the Social Security Act.

Notice of Cancellation—the written notice sent from the health insurance issuer to the Secretary of the Department of Health and Hospitals by certified mail, return receipt requested, with regard to the cancellation of coverage for a newborn child. This *notice of cancellation* may, as a courtesy, also be sent via electronic means to the Secretary of the Department of Health and Hospitals; however, such electronic notice shall not satisfy the notice requirement set forth in the enabling statute that requires the Notice of Cancellation be sent by certified mail, return receipt requested, to the Secretary of the Department of Health and Hospitals.

Qualifying Newborn Child—a newborn child who meets the eligibility provisions of the State Plan Medical Assistance under Title XIX of the Social Security Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 to implement and enforce the provisions of R.S. 22:250.2.E.(2)(b) and (c), and 22:250.4.F, and 22:250.11.E, and 22:250.15.A of Part VI-C of Chapter 1 of Title 22 of the Louisiana Revised Statutes of 1950, as amended.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

§11109. Enrollment Notification Procedures for a Qualifying Newborn Child

A. Upon notification of the birth of a newborn child who is potentially eligible under Title XIX of the Social Security Act, the health insurance issuer shall be required to:

1. verify that dependant coverage is available for the newborn child or make a determination that no coverage is available for the newborn child;
2. make a determination of the benefit limits with regard to the newborn child;
3. make a determination of any additional premium, if applicable, that may be due in order to provide dependent coverage for the newborn child; and
4. designate a point of contact (which may be a specific position), with telephone number and physical address, to represent the health insurance issuer to facilitate all matters relative to the newborn child.

B. Upon notification of the birth of a newborn child who is potentially eligible under Title XIX of the Social Security Act, the health insurance issuer shall be required to notify the following persons:

1. with regard to an individual policy, the policyholder;
2. with regard to a group policy, both the employer and the employee;
3. with regard to either an individual policy or a group policy, the health care facility that rendered any medical service to the newborn child from the moment of birth until such time as the infant is discharged from said health care facility to his or her home.

C. The notification that the health insurance issuer is required to send to the persons referred to in Subsection B above shall include the following information:

1. verification as to whether the health plan provides coverage under which the newborn child could be enrolled as a dependent or, if such coverage is not available under the health care plan, an explanation of why such coverage is not available;
2. the additional amount of premium due, if any, in order to provide dependent coverage for the newborn child;

3. designate a point of contact (which may be a specific position), with telephone number and physical address, to represent the health insurance issuer to facilitate all matters relative to the newborn child; and

4. statement to the policyholder under an individual policy or the employee and employer under a group plan that additional information is needed by the health insurance issuer. A health insurance issuer may request that the signature of the policyholder of an individual policy or employee and employer under a group plan be on the enrollment form. However, the failure of the policyholder or employee or employer, as applicable, to place a signature on the enrollment form shall not be a requirement for the enrollment of the newborn child, as the newborn child is enrolled as a matter of law.

D. The health insurance issuer shall be required to provide 90 days written notice to the Secretary of the Department of Health and Hospitals prior to the cancellation of health coverage for a potential qualifying newborn child. This notice shall provide the following documents and/or information:

1. the group identification/policy number or the individual identification/policy number, as applicable, including, but not limited to, the major medical identification number and the prescription drug identification number;

2. summary of benefits, including, but not limited to, an itemization of all covered benefits and applicable co-payments and deductibles;

3. amount of additional premium due in order to provide dependent coverage for the newborn child, including, but not limited to, the total premium (month or portion of a month) due to effectuate coverage for the newborn child from the date of birth;

4. the name(s) of the member subscriber of the newborn child, including, but not limited to, the name(s) of any and all other dependent(s) and the effective date of coverage for each person(s) named as a dependent;

5. designate a point of contact (which may be a specific position), with telephone number and physical address, to represent the health insurance issuer to facilitate all matters relative to the newborn child.

E. Additionally, no later than three days after the mailing of the written notice to the Secretary of the Department of Health and Hospitals referred to in Subsection D above, the health insurance issuer shall provide the same documents and/or information to any and all health care facilities and any and all health care providers who have submitted a claim prior to or on the date of notice of cancellation.

F. The Secretary of the Department of Health and Hospitals shall have 90 days, commencing the day after the secretary receives the written notice, via certified mail, return receipt requested, from the health insurance issuer as provided in Subsection D above, to pay the applicable additional premium attributable to the newborn child to retain the newborn child as a covered dependent under the policy of health insurance.

G. If that portion of the applicable additional premium attributable to the newborn child being retained as a covered

dependent under the policy of health insurance remains unpaid after the expiration of the 90 day written notice time period referred to in Subsection E above to the Secretary of Department of Health and Hospitals, the health insurance issuer may thereafter cancel the dependent coverage for the newborn child effective as of the date of birth of the newborn child.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 to implement and enforce the provisions of R.S. 22:250.2.E.(2)(b) and (c), and 22:250.4.F, and 22:250.11.E, and 22:250.15.A of Part VI-C of Chapter 1 of Title 22 of the Louisiana Revised Statutes of 1950, as amended.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

§11111. Procedures for a Non-Qualifying Newborn Child

A. The health insurance issuer shall be required to comply with the provisions of the Health Insurance Portability and Accountability Act of 1996 with regard to the enrollment procedures relative to dependent coverage for a non-qualifying newborn child.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 to implement and enforce the provisions of R.S. 22:250.2.E.(2)(b) and (c), and 22:250.4.F, and 22:250.11.E, and 22:250.15.A of Part VI-C of Chapter 1 of Title 22 of the Louisiana Revised Statutes of 1950, as amended.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

§11113. Timely Payment of Claims

A. In cases where the time for the payment of a claim may be effected by the requirements of R.S. 22:250.4 et seq., such requirements shall be considered "just and reasonable grounds" for a health insurance issuer to delay in the payment of a claim pursuant to R.S. 22:250.31 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 to implement and enforce the provisions of R.S. 22:250.2.E.(2)(b) and (c), and 22:250.4.F, and 22:250.11.E, and 22:250.15.A of Part VI-C of Chapter 1 of Title 22 of the Louisiana Revised Statutes of 1950, as amended.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

§11115. Sanctions

A. A health insurance issuer that does not comply with any of the time limits for action or notice set forth in this regulation, or who does not provide all of the information required in this regulation, shall be subject to the sanctions set forth in R.S. 22:1457.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 to implement and enforce the provisions of R.S. 22:250.2.E.(2)(b) and (c), and 22:250.4.F, and 22:250.11.E, and 22:250.15.A of Part VI-C of Chapter 1 of Title 22 of the Louisiana Revised Statutes of 1950, as amended.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

§11117. Severability

A. If any section or provision of this regulation or the application to any person or circumstance is held invalid, such invalidity or determination shall not affect other sections or provisions or the application of this regulation to any persons or circumstances that can be given effect without the invalid section or provision or application, and for these purposes the sections and provisions of this regulation and the application to any persons or circumstances are severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:23 to implement and enforce the provisions of R.S. 22:250.2.E.(2)(b) and (c), and 22:250.4.F, and 22:250.11.E, and 22:250.15.A of Part VI-C of Chapter 1 of Title 22 of the Louisiana Revised Statutes of 1950, as amended.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

§11119. Effective Date

A. This regulation shall be effective upon final publication in the *Louisiana Register*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:23 to implement and enforce the provisions of R.S. 22:250.2.E.(2)(b) and (c), and 22:250.4.F, and 22:250.11.E, and 22:250.15.A of Part VI-C of Chapter 1 of Title 22 of the Louisiana Revised Statutes of 1950, as amended.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

Family Impact Statement

Proposed Regulation 86, regarding dependant coverage for certain newborns in the Individual and Group Health Insurance market, sets for reasonable requirements and standards for processing of such coverage by health insurance issuers, that assures compliance with applicable laws, rules and regulations.

Newborns are required to be covered as dependants under parents'/guardians' individual or group health insurance coverage, as opposed to allowing the family/mother to place these infants under Medicaid.

1. Stability of the Family. This should have no impact on the stability of the family.

2. Authority and Rights of Parents Regarding the Education and Supervision of Their Children. The regulation implements law that requires that certain newborns be covered as dependants under the parents'/guardians' individual or group health insurance coverage. Previously, insured parents could place the newborn under Medicaid at their discretion. Medicaid will pay the premium for the infant. There should be no impact on parental rights regarding education and supervision of their children.

3. Functioning of the family. There should be no impact from Regulation 86 on the functioning of the family.

4. Family Earnings and Family Budget. There should be no impact on family earnings or the family budget.

5. Behavior and Personal Responsibility of Children. There should be no impact upon behavior and personal responsibility of children.

6. Ability of the Family or a Local Government to Perform the Function as Contained in the Proposed Regulation.

On Tuesday, March 29, 2005, at 2 p.m., the Department of Insurance will hold a public hearing in the Poydras Hearing Room of the Louisiana Department of Insurance Building located at 1702 N. Third Street, Baton Rouge, LA 70802 to discuss the proposed Regulation 86 as set forth below. This intended action complies with the statutory law administered by the Department of Insurance. Adoption of this proposed Regulation 86 is authorized by Act 269 of the 2004 Regular Legislative Session.

J. Robert Wooley
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Regulation 86 **C**Dependent Coverage of Newborn Children in the Group and Individual Market

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

DOI does not anticipate any implementation costs or savings as a result of adoption of Regulation 86. DOI's responsibilities will be limited to regulation - investigation and proper action when instances of non-compliance by insurers are presented. There may be some fines as a result of non-compliance; however, DOI has no way of estimating how many instances of non-compliance will be investigated, nor of how many may generate fines or penalties upon insurers. DOI believes that its existing staff will be able to handle any cases resulting from adoption of Regulation 86. Administrative responsibilities rest with Department of Health and Hospitals, which is filing its own FEIS for this regulation

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Adoption of Regulation 86 should have no effect on revenue collections of local governments nor upon the Louisiana Department of Insurance (DOI). DOI will have normal regulatory responsibilities in situations where insurers do not perform as they are required to do under the law. It is impossible to state how many instances of failure to comply may occur, and therefore impossible to estimate the amount, if any, that might be collected as fines for non-compliance. At this time, DOI expects to be able to absorb any additional work resulting from adoption of Regulation 86 using its existing resources.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Newborns who qualify under this law (per State Plan Medical Assistance under Title XIX of the Social Security Act) would be covered as dependants under any group or individual plan available through the parents'/guardians. The choice of where the child is covered goes to DHH under this regulation. DHH would have ninety (90) days to decide whether to pay the the premiums for the child under the parent's/guardian's policy, or to place the child under Medicaid.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The adoption of this regulation should have no impact on competition and employment.

Chad M. Brown
Deputy Commissioner
0502#032

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Insurance Office of the Commissioner

Regulation Number 83 **C**Domestic Insurer's Use of
Custodial Agreements and the Use of Clearing Corporations
(LAC 37:XIII.Chapter 105)

Under the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Commissioner of the Louisiana Department of Insurance

hereby gives notice of the department's intent to promulgate its Regulation 83 which will more fully implement Act 342, passed during the 2004 Regular Session of the Louisiana Legislature. Act 342 amended and re-enacted R.S. 22:39.D relative to domestic insurers. This regulation provides additional detail with regard to a domestic insurer's use of certain types of accounts for the safekeeping of its securities.

On March 30, 2005, beginning at 10:00 a.m., the Department of Insurance will hold a public hearing in the Poydras Hearing Room located at 1702 N. Third Street, Baton Rouge, LA 70802 to allow for public commentary concerning the proposed promulgation of its Regulation 83 as set forth below.

Title 37
INSURANCE

Part XIII. Regulations

Chapter 105. Regulation Number 83

§10501. Definitions

A. When used in this regulation, the term:

Agent A national bank, state bank, trust company or broker/dealer that maintains an account in its name in a clearing corporation or that is a member of the Federal Reserve System and through which a custodian participates in a clearing corporation, including the Treasury/Reserve Automated Debt Entry Securities System (TRADES) or Treasury Direct systems, except that with respect to securities issued by institutions organized or existing under the laws of a foreign country or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, "agent" may include a corporation that is organized or existing under the laws of a foreign country and that is legally qualified under those laws to accept custody of securities.

Clearing Corporation A corporation as defined in [Section 8-102(a)(5) of the Uniform Commercial Code] that is organized for the purpose of effecting transactions in securities by computerized book-entry, except that with respect to securities issued by institutions organized or existing under the laws of a foreign country or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, "clearing corporation" may include a corporation that is organized or existing under the laws of a foreign country and which is legally qualified under those laws to effect transactions in securities by computerized book-entry. Clearing corporation also includes "Treasury/Reserve Automated Debt Entry Securities System" and "Treasury Direct" book-entry securities systems established pursuant to 31 U.S.C. § 3100 et seq., 12 U.S.C. pt. 391 and 5 U.S.C. pt. 301.

Custodian

a. A national bank, state bank or trust company that shall at all times during which it acts as a custodian pursuant to this regulation be no less than adequately capitalized as determined by the standards adopted by United States banking regulators and that is regulated by either state banking laws or is a member of the Federal Reserve System and that is legally qualified to accept custody of securities in accordance with the standards set forth below, except that with respect to securities issued by institutions organized or existing under the laws of a foreign country, or securities used to meet the deposit requirements pursuant to the laws

of a foreign country as a condition of doing business therein, "custodian" may include a bank or trust company incorporated or organized under the laws of a country other than the United States that is regulated as such by that country's government or an agency thereof that shall at all times during which it acts as a custodian pursuant to this regulation be no less than adequately capitalized as determined by the standards adopted by international banking authorities and that is legally qualified to accept custody of securities; or

b. A broker/dealer that shall be a member of the National Association of Security Dealers, registered with and subject to jurisdiction of the Securities and Exchange Commission, maintains membership in the Securities Investor Protection Corporation, has an agency office in this state and has a tangible net worth equal to or greater than \$250,000,000.

Custodied Securities Securities held by the custodian or its agent or in a clearing corporation, including the Treasury/Reserve Automated Debt Equity Securities System (TRADES) or Treasury Direct systems.

Tangible Net Worth Shareholders equity, less intangible assets, as reported in the broker/dealer's most recent Annual or Transition Report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 (S.E.C. Form 10-K) filed with the Securities and Exchange Commission.

Treasury/Reserve Automated Debt Entry Securities System (TRADES) and Treasury Direct The book entry securities systems established pursuant to 31 U.S.C. §3100 et seq., 12 U.S.C. pt. 391 and 5 U.S.C. pt. 301. The operation of TRADES and Treasury Direct are subject to 31 C.F.R. pt. 357 et seq.

Security Has the same meaning as that defined in Section 8-102(a)(15) of the Uniform Commercial Code.

Securities' Certificate Has the same meaning as that defined in Section 8-102(a)(16) of the Uniform Commercial Code.

AUTHORITY NOTE: Promulgated in accordance with Act 342 of the 2004 Louisiana Regular Legislative Session; R.S. 22:39.D; and the Louisiana Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

§10503. Custody Agreement; Requirements

A. An insurance company may, by written agreement with a custodian, provide for the custody of its securities with that custodian. The securities that are the subject of the agreement may be held by the custodian or its agent or in a clearing corporation.

B. The agreement shall be in writing and shall be authorized by a resolution of the board of directors of the insurance company or of an authorized committee of the board. The terms of the agreement shall comply with the following.

1. Securities' certificates held by the custodian shall be held separate from the securities' certificates of the custodian and of all of its other customers.

2. Securities held indirectly by the custodian and securities in a clearing corporation shall be separately identified on the custodian's official records as being owned by the insurance company. The records shall identify which securities are held by the custodian or by its agent and which securities are in a clearing corporation. If the securities are in

a clearing corporation, the records shall also identify where the securities are and if in a clearing corporation, the name of the clearing corporation and if through an agent, the name of the agent.

3. All custodied securities that are registered shall be registered in the name of the company or in the name of a nominee of the company or in the name of the custodian or its nominee or, if in a clearing corporation, in the name of the clearing corporation or its nominee.

4. Custodied securities shall be held subject to the instructions of the insurance company and shall be withdrawable upon the demand of the insurance company, except that custodied securities used to meet the deposit requirements set forth in section 22:1021 of this insurance law shall, to the extent required by that section, be under the control of the Louisiana Department of Insurance and shall not be withdrawn by the insurance company without the approval of the Louisiana Department of Insurance.

5. The custodian shall be required to send or cause to be sent to the insurance company a confirmation of all transfers of custodied securities to or from the account of the insurance company. In addition, the custodian shall be required to furnish no less than monthly the insurance company with reports of holdings of custodied securities at times and containing information reasonably requested by the insurance company. If applicable, the custodian's trust committee's annual reports of its review of the insurer's trust accounts shall also be provided to the insurer. Reports and verifications may be transmitted in electronic or paper form.

6. During the course of the custodian's regular business hours, an officer or employee of the insurance company, an independent accountant selected by the insurance company and a representative of an appropriate regulatory body shall be entitled to examine, on the premises of the custodian, the custodian's records relating to custodied securities, but only upon furnishing the custodian with written instructions to that effect from an appropriate officer of the insurance company.

7. The custodian and its agents shall be required to maintain and make available to the insurance company as it may reasonably request:

a. reports which they receive from a clearing corporation on their respective systems of internal accounting control; and

b. reports prepared by outside auditors on the custodians or its agent's internal accounting control of custodied securities.

8. The custodian shall maintain records sufficient to determine and verify information relating to custodied securities that may be reported in the insurance company's annual statement and supporting schedules and information required in an audit of the financial statements of the insurance company.

9. The custodian shall provide, upon written request from an appropriate officer of the insurance company, the appropriate affidavits, substantially in the form attached to this regulation, with respect to custodied securities.

10. A national bank, state bank or trust company shall secure and maintain insurance protection in an adequate amount covering the bank's or trust company's duties and activities as custodian for the insurer's assets, and shall state in the custody agreement that protection is in compliance

with the requirements of the custodian's banking regulator. A broker/dealer shall secure and maintain insurance protection for each insurance company's custodied securities in excess of that provided by the Securities Investor Protection Corporation in an amount equal to or greater than the market value of each respective insurance company's custodied securities. The commissioner may determine whether the type of insurance is appropriate and the amount of coverage is adequate.

11. The custodian shall be obligated to indemnify the insurance company for any loss of custodied securities occasioned by the negligence or dishonesty of the custodian's officers or employees, or burglary, robbery, holdup, theft or mysterious disappearance, including loss by damage or destruction.

12. In the event that there is a loss of custodied securities for which the custodian shall be obligated to indemnify the insurance company as provided in Paragraph 11 above, the custodian shall promptly replace the securities or the value thereof and the value of any loss of rights or privileges resulting from the loss of securities. Such indemnification does not apply to nor protect against losses from any change in the market value of custodied securities.

13. The agreement may provide that the custodian will not be liable for a failure to take an action required under the agreement in the event and to the extent that the taking of the action is prevented or delayed by war (whether declared or not and including existing wars), revolution, insurrection, riot, civil commotion, act of God, accident, fire, explosion, stoppage of labor, strikes or other differences with employees, laws, regulations, orders or other acts of any governmental authority, or any other cause whatever beyond its reasonable control.

14. In the event that the custodian gains entry in a clearing corporation through an agent, there shall be an agreement between the custodian and the agent under which the agent shall be subject to the same liability for loss of custodied securities as the custodian. However, if the agent shall be subject to regulation under the laws of a jurisdiction that is different from the jurisdiction the laws of which regulate the custodian, the Commissioner of Insurance of the state of domicile of the insurance company may accept a standard of liability applicable to the agent that is different from the standard of liability applicable to the custodian.

15. The custodian shall provide written notification to the insurer's domiciliary commissioner if the custodial agreement with the insurer has been terminated or if 100 percent of the account assets in any one custody account have been withdrawn. This notification shall be remitted to the insurance commissioner within three business days of the receipt by the custodian of the insurer's written notice of termination or within three business days of the withdrawal of 100 percent of the account assets.

AUTHORITY NOTE: Promulgated in accordance with Act 342 of the 2004 Louisiana Regular Legislative Session; R.S. 22:39.D.; and the Louisiana Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

§10505. Deposit with Affiliates; Requirements

A. Nothing in this regulation shall prevent an insurance company from depositing securities with another insurance company with which the depositing insurance company is

affiliated, provided that the securities are deposited pursuant to a written agreement authorized by the board of directors of the depositing insurance company or an authorized committee thereof and that the receiving insurance company is organized under the laws of one of the states of the United States of America or of the District of Columbia. If the respective states of domicile of the depositing and receiving insurance companies are not the same, the depositing insurance company shall have given notice of the deposit to the insurance commissioner in the state of its domicile and the insurance commissioner shall not have objected to it within 30 days of the receipt of the notice.

B. The terms of the agreement shall comply with the following.

1. The insurance company receiving the deposit shall maintain records adequate to identify and verify the securities belonging to the depositing insurance company.

2. The receiving insurance company shall allow representatives of an appropriate regulatory body to examine records relating to securities held subject to the agreement.

3. The depositing insurance company may authorize the receiving insurance company:

a. to hold the securities of the depositing insurance company in bulk, in certificates issued in the name of the receiving insurance company or its nominee, and to commingle them with securities owned by other affiliates of the receiving insurance company; and

b. to provide for the securities to be held by a custodian, including the custodian of securities of the receiving insurance company or in a clearing corporation.

AUTHORITY NOTE: Promulgated in accordance with Act 342 of the 2004 Louisiana Regular Legislative Session; R.S. 22:39.D.; and the Louisiana Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

§10507. Custodian Affidavit Form A

CUSTODIAN AFFIDAVIT

(For use by a custodian where securities entrusted to its care have not been redeposited elsewhere.)

STATE OF _____)
) ss.
COUNTY OF _____)

_____, being duly sworn deposes and says that he or she is _____ of _____, a corporation organized under and pursuant to the laws of the _____ with the principal place of business at _____ (hereinafter called the "corporation");

That his or her duties involve supervision of activities as custodian and records relating thereto;

That the corporation is custodian for certain securities of _____ having a place of business at _____ (hereinafter called the "insurance company") pursuant to an agreement between the corporation and the insurance company;

That the schedule attached hereto is a true and complete statement of securities (other than those caused to be deposited with The Depository Trust Company or like entity or a Federal Reserve Bank under the TRADES or Treasury Direct systems) which were in the custody of the corporation for the account of the insurance company as of the close of business on _____; that, unless otherwise indicated on the schedule, the next maturing and all subsequent coupons were then either attached to coupon bonds or in the process of collection; and that, unless otherwise shown on the schedule,

all such securities were in bearer form or in registered form in the name of the insurance company or its nominee or of the corporation or its nominee, or were in the process of being registered in such form;

That the corporation as custodian has the responsibility for the safekeeping of such securities as that responsibility is specifically set forth in the agreement between the corporation as custodian and the insurance company; and

That, to the best of his or her knowledge and belief, unless otherwise shown on the schedule, the securities were the property of the insurance company and were free of all liens, claims or encumbrances whatsoever.

Subscribed and sworn to
before me this ____ day
of _____, 20____
_____(L.S.)
Vice President [or other authorized officer]

AUTHORITY NOTE: Promulgated in accordance with Act 342 of the 2004 Louisiana Regular Legislative Session; R.S. 22:39.D.; and the Louisiana Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

§10509. Custodian Affidavit Form B

CUSTODIAN AFFIDAVIT

(For use in instances where a custodian corporation maintains securities on deposit with the Depository Trust Company or like entity.)

STATE OF _____)
) ss.
COUNTY OF _____)

_____, being duly sworn deposes and says that he or she is _____ of _____, a corporation organized under and pursuant to the laws of the _____ with the principal place of business at _____ (hereinafter called the "corporation");

That his or her duties involve supervision of activities of the corporation as custodian and records relating thereto;

That the corporation is custodian for certain securities of _____ having a place of business at _____

(hereinafter called the "insurance company") pursuant to an agreement between the corporation and the insurance company;

That the corporation has caused certain of such securities to be deposited with _____ and that the schedule attached hereto is a true and complete statement of the securities of the insurance company of which the corporation was custodian as of the close of business on _____, and which were so deposited on such date;

That the corporation as custodian has the responsibility for the safekeeping of the securities both in the possession of the corporation or deposited with _____ as is specifically set forth in the agreement between the corporation as custodian and the insurance company; and

That, to the best of his or her knowledge and belief, unless otherwise shown on the schedule, the securities were the property of the insurance company and were free of all liens, claims or encumbrances whatsoever.

Subscribed and sworn to
before me this ____ day
of _____, 20____
_____(L.S.)
Vice President [or other authorized officer]

AUTHORITY NOTE: Promulgated in accordance with Act 342 of the 2004 Louisiana Regular Legislative Session; R.S. 22:39.D.; and the Louisiana Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

§10511. Custodian Affidavit Form C

CUSTODIAN AFFIDAVIT

(For use where ownership is evidenced by book entry at a Federal Reserve Bank.)

STATE OF _____)
) ss.
 COUNTY OF _____)

_____, being
 duly sworn deposes and says that he or she is _____
 of _____, a
 corporation organized under and pursuant to the laws of the
 _____ with the principal place of
 business at _____
 (hereinafter called the "corporation");

That his or her duties involve supervision of activities of
 the corporation as custodian and records relating thereto;

That the corporation is custodian for certain securities of
 _____ with a place of
 business at _____ (hereinafter called
 the "insurance company") pursuant to an agreement between
 the corporation and the insurance company;

That it has caused certain securities to be credited to its
 book entry account with the Federal Reserve Bank of
 _____ under the
 TRADES or Treasury Direct systems; and that the schedule
 attached hereto is a true and complete statement of the
 securities of the insurance company of which the corporation
 was custodian as of the close of business on
 _____, which were in a "general" book entry
 account maintained in the name of the corporation on the
 books and records of the Federal Reserve Bank of
 _____ at such date;

That the corporation has the responsibility for the
 safekeeping of such securities both in the possession of the
 corporation or in the "general" book entry account as is
 specifically set forth in the agreement between the corporation
 as custodian and the insurance company; and

That, to the best of his or her knowledge and belief, unless
 otherwise shown on the schedule, the securities were the
 property of the insurance company and were free of all liens,
 claims or encumbrances whatsoever.

Subscribed and sworn to
 before me this _____ day
 of _____, 20____
 _____ (L.S.)
 Vice President [or other authorized officer]

AUTHORITY NOTE: Promulgated in accordance with Act
 342 of the 2004 Louisiana Regular Legislative Session; R.S.
 22:39.D.; and the Louisiana Administrative Procedure Act, R.S.
 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of
 Insurance, Office of the Commissioner, LR 31:

Family Impact Statement

1. Describe the effect of the proposed Rule on the
 stability of the family. The proposed regulation should have
 no measurable impact upon the stability of the family.

2. Describe the effect of the proposed Rule on the
 authority and rights of parents regarding the education and
 supervision of their children. The proposed regulation should
 have no impact upon the rights and authority of parents
 regarding the education and supervision of their children.

3. Describe the effect of the proposed Rule on the
 functioning of the family. The proposed regulation should
 have no direct impact upon the functioning of family.

4. Describe the effect of the proposed Rule on family
 earnings and budget. The proposed regulation should have

no direct impact upon family earnings and budget; however,
 one may assume that earnings of the institutions now
 qualifying as "custodians" could have some positive impact
 on the salaries or job security of some of the "custodian"
 institution's employees, which could benefit their families.

5. Describe the effect of the proposed Rule on the
 behavior and personal responsibility of children. The
 proposed regulation should have no impact upon the
 behavior and personal responsibility of children.

6. Describe the effect of the proposed Rule on the
 ability of the family or a local government to perform the
 function as contained in the Rule. The proposed regulation
 should have no impact upon the ability of the family or a
 local governmental unit to perform the function as contained
 in the Rule.

J. Robert Wooley
 Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT
 FOR ADMINISTRATIVE RULES
 RULE TITLE: Domestic Insurer's Use of Custodial
 Agreements and the Use of Clearing
 Corporations Regulation Number 83**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
 STATE OR LOCAL GOVERNMENT UNITS (Summary)**

No state or local governmental unit should incur
 implementation costs or savings as a result of adoption of
 Regulation 83. The regulation brings Louisiana into
 compliance with the National Association of Insurance
 Commissioners (NAIC) model with respect to which
 institutions may act as "custodian" for an insurer's security. The
 regulation allows insurers greater diversity in selecting a
 custodian for those securities.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
 OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed regulation should have no effect on revenue
 collections of local or state governmental units. DOI already
 checks where the insurer's security is held when financial
 analysis or field examination/audit are done in accordance with
 statute.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
 DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
 GROUPS (Summary)**

Institutions qualifying as "custodian" under the law would
 earn income as a result of providing this service to insurers, but
 DOI cannot estimate what that income might be. This
 regulation brings DOI into compliance with the National
 Association of Insurance Commissioners' national model.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
 (Summary)**

The proposed regulation should have no net impact on
 competition and employment. The new choices available to
 insurers will result in some entities gaining additional business
 and some entities losing business.

Chad M. Brown
 Deputy Commissioner
 0502#039

Robert E. Hosse
 General Government Section Director
 Legislative Fiscal Office

NOTICE OF INTENT

**Department of Public Safety and Corrections
Office of Corrections Services**

Adult and Juvenile Services Notice
(LAC 22:I.367)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.), the Department of Public Safety and Corrections, Corrections Services, hereby gives notice of its intent to repeal the entire contents of §367, Notice.

The Department of Public Safety and Corrections hereby gives notice of its intent to repeal the current regulation based on the fact that R.S. 15:866.2 is current law. As a result, Notice in Title 22 is merely duplicative.

Title 22

**CORRECTIONS, CRIMINAL JUSTICE AND LAW
ENFORCEMENT**

Part I. CORRECTIONS

**Chapter 3. Adult and Juvenile Services
§367. Notice**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:823, *Wolff v. McDonnell*, 94 S.Ct. 2963 (1974) and *Ralph v. Dees*, C.A. 71-94, USDC (Md.La.).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Adult Services, LR 7:6 (January 1981), repromulgated by the Department of Public Safety and Corrections, Corrections Services, Office of Adult Services, LR 17:605 (June 1991), LR 19:657 (May 1993), repealed by the Department of Public Safety and Corrections, Corrections Services, LR 31:

Family Impact Statement

In accordance with the Administrative Procedure Act, R.S. 49:953(A)(1)(a)(viii) and R.S. 49:972, the Department of Public Safety and Corrections, Corrections Services, hereby provides the Family Impact Statement.

Rescission of the current LAC 22:I:367 by the Department of Public Safety and Corrections, Corrections Services, will have no effect on the stability of the family, on the authority and rights of parents regarding the education and supervision of their children, on the functioning of the family, on family earnings and family budget, on the behavior and personal responsibility of children or on the ability of the family or a local government to perform the function as contained in the proposed rule rescission.

Interested persons may submit their comments in writing to Melinda L. Long, Attorney for Secretary Richard L. Stalder, LA Department of Public Safety and Corrections, P.O. Box 94304, Baton Rouge, LA 70804, until 8 a.m. on March 14, 2005.

Richard L. Stalder
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Adult and Juvenile Services Notice

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

- There are no estimated costs or savings to state or local governmental units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There is no estimated effect on revenue collections of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There is no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There is no estimated effect on competition and employment.

B.E. "Trey" Boudreaux, III Undersecretary 0502#017	Robert E. Hosse General Government Section Director Legislative Fiscal Office
--	---

NOTICE OF INTENT

**Department of Public Safety and Corrections
Office of Corrections Services**

Air Traffic Regulation, Attorney Visits,
and Inmate Marriage Request
(LAC 22:I.105, 317, and 329)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.), the Department of Public Safety and Corrections, Corrections Services, hereby gives notice of its intent to repromulgate the entire contents of §105.Regulation of Air Traffic, §317.Attorney Visits, and §329.Inmate Marriage Request.

Within the Department of Public Safety and Corrections, the Office of Youth Development has been statutorily separated from the Office of Corrections Services. Therefore, Title 22 is being re-codified into two sections: adult offenders and juvenile offenders. The purpose of the repromulgation of the aforementioned regulations is to further this effort by reorganizing all policies deemed to be internal management or any policy that has since been written into an existing regulation.

Title 22

**CORRECTIONS, CRIMINAL JUSTICE AND LAW
ENFORCEMENT**

Part I. Corrections

**Chapter 1. Secretary's Office
§105. Regulation of Air Traffic**

- A. Purpose. To establish the secretary's policy regarding air traffic at correctional institutions.
- B. Applicability. Chief of Operations, Assistant Secretary and Wardens. Each warden shall ensure that procedures are in place to comply with the provisions of this regulation.
- C. Policy. It is the secretary's policy that all incoming and outgoing aircraft to and from the institutions be monitored.
- D. General Procedures

1. Individuals who have reason to come to the institutions via aircraft must request permission and receive authorization in advance, by telephone or in writing, to land

at the institution--specifically to land on the airstrip at the Louisiana State Penitentiary or Dixon Correctional Institute.

2. Requests should be directed to the warden's office during regular business hours, Monday through Friday. Calls received after hours or on weekends or holidays will be handled by the duty officer.

3. The individual requesting permission to land must provide the following information:

- a. reason for coming to the institution;
- b. date and expected time of arrival;
- c. number and names of persons aboard aircraft;
- d. type of aircraft, color, and registration number.

4. The warden's office will notify the control center of approved air traffic. The control center will notify the prison towers to inform the officer(s) of the incoming air traffic, the expected time of arrival, and description of the aircraft. The tower officer will in turn inform the control center when the aircraft arrives. The control center will then dispatch security to meet the incoming aircraft and to verify the identification of the occupants and provide ground transportation when necessary.

5. A log will be maintained by security of all aircraft that lands or departs from the institution. This log will contain the date, time of arrival, type of aircraft, color, registration number, and the names of passengers.

6. Low flying aircraft attempting to land anywhere within any of the institutions will be reported to the control center immediately. The control center will notify security and other appropriate personnel.

7. Each Warden is responsible for developing written procedures for handling unauthorized and/or emergency landing situations, and for securing inmates in the immediate area.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:831(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 31:

Chapter 3. Adult Services

§317. Attorney Visits

A. Purpose. To provide uniform procedures for the approval and conduct of visits by attorneys to inmates.

B. Applicability. Deputy Secretary, Chief of Operations, Assistant Secretary and Wardens. The warden is responsible for implementing this regulation and conveying its contents to all inmates, affected employees and attorneys seeking to visit.

C. Policy. It is the secretary's policy that attorney visits be in accordance with the procedures outlined herein.

D. Procedures

1. Approval of Attorneys. An attorney's credentials must be verified through the State Bar Association prior to being approved to visit or initiate privileged communication with inmates.

2. Approval of Authorized Representatives. Paralegal assistants, law clerks, and investigators may be permitted to enter the institution to conduct interviews with inmate clients of their supervising attorney, either with the attorney or alone. Such permission is at the discretion of the warden, who may approve or disapprove these requests. Prior to a paralegal assistant (hereinafter referred to as paralegal), law clerk, or investigator being approved to enter the grounds of

the institution, the following criteria must be met by the employing attorney:

a. The paralegal, law clerk, or investigator must not be on the visiting list of any inmate confined in a state institution, (except for immediate family members.)

b. A paralegal must have completed a paralegal or legal assistant study program at an accredited four-year college or junior college, or have completed a paralegal or legal assistant study program approved by the American Bar Association. [Certification by the National Association of Legal Assistants, Inc. as a Certified Legal Assistant (CLA) may be substituted for the aforementioned programs.]

c.i. The employing or supervising attorney must submit an affidavit (see attached form) to the warden of the institution to be visited certifying the following prior to the approval for a paralegal, law clerk, or investigator to enter institutional grounds:

(a) the individual's name, social security number, and birth date;

(b) the length of time the individual has been employed or supervised by the attorney;

(c) paralegals and investigators must attach a copy of their certification or license to the affidavit.

ii. This information will then be verified, and the attorney notified of the disposition of the request. Thereafter, for a period not to exceed one year from the date of approval, as long as the paralegal, law clerk, or investigator continues in the employ or under the supervision of the same attorney, visits may be approved.

3. Scheduling. Visits by attorneys and their authorized representatives must be scheduled through the institution at least 24 hours in advance.

4. Time of Visits. Visits by attorneys and their authorized representatives must normally take place Monday through Friday, excluding holidays, between the hours of 8 a.m. and 4 p.m.

5. Exceptions

a. The warden may approve special visits not in conformity with Subsection E. when unusual circumstances warrant.

b. Any improper acts or unethical behavior with an inmate during a visit may result in an attorney or their authorized representatives being denied future requests to visit an inmate.

E. Limitations on Visits

1. Number of Inmates. Generally, no more than ten inmates may be seen at any one time, and no more than twenty on any one day. Further limitations may be imposed by the warden if valid reasons exist.

2. Number of Attorneys. Generally, no more than two persons (attorneys, paralegals, law clerks, investigators or any combination thereof) may see an inmate on any one day; however, the number visiting at one time may be limited based on available space and security constraints. Exceptions may be approved for good cause by the warden.

F. General

1. Paralegals, law clerks, and investigators may be required to attend training/ orientation prior to be allowed to visit.

2. Inmates may refuse to see any attorney, but such refusal should be in writing.

3. A log shall be maintained of all visits by attorneys, paralegals, law clerks, and investigators.

4. Visits may be visually observed, but conversations between inmates and counsel shall not, under any circumstance, be monitored.

5. Visits between death row inmates and attorneys, paralegals, law clerks, and investigators may be non-contact at the warden's discretion.

6. Attorneys, paralegals, law clerks, and investigators are subject to the procedures regarding searches outlined in Department Regulation No. C-02-005 "Searches of Visitors," as are all other visitors.

G. Exception. Nothing contained in this regulation shall apply to attorneys representing the state, the department, or the institution.

STATE OF _____
PARISH/COUNTY OF _____

**PARALEGAL, LAW CLERK, OR
INVESTIGATOR AFFIDAVIT**

BEFORE ME, the undersigned Notary, personally came and appeared _____(1) who after being duly sworn did depose and say that:

I am an attorney-at-law and I am presently representing _____(2) an inmate confined by the Louisiana Department of Public Safety and Corrections. _____(3) is employed or supervised by me as a _____(4), and has been since _____(5).

Should the individual leave my employ or supervision, I will notify the institution.

Attorney-at-Law
Sworn to and subscribed before me this ___day of _____, _____ at _____

Notary
(1) Attorney's name
(2) Inmate's name and DOC #
(3) Representative's name, social security number and birth date
(4) Paralegal, law clerk, or investigator
(5) Beginning date of employment or supervision

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:833(A).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 26:1313 (June 2000), amended LR 31:

§329. Inmate Marriage Requests

A. Purpose. The purpose of this regulation is to establish the Secretary's policy concerning inmate marriage requests.

B. Applicability. The regulation is applicable to the deputy secretary, chief of operations, assistant secretary and all the wardens. It is the warden's responsibility to ensure that the appropriate procedures are in place to comply with the provisions of this regulation.

C. Procedures

1. An inmate's request to be married should be submitted to the warden for review.

2. The warden or designee and/or the chaplain should discuss the marriage proposal with both the parties and document that the parties were counseled.

3. Should the chaplain choose not to perform the marriage, he should so inform both parties. Only approved and licensed authorities (clergy, judges and justices of the peace) will be permitted to perform the ceremony.

4. The inmate must appropriately certify that both parties meet all legal qualifications for marriage. The burden of proof rests with the inmate to gather this information.

5. If both parties are incarcerated in correctional institutions, the marriage may be postponed until one of them has been released.

6. The inmate making the request must pay for all costs associated with the marriage.

7. Absent unusual circumstances related to legitimate penological objectives, the warden or designee should approve the marriage request and set an appropriate time and place for the ceremony. Furloughs will not granted for a marriage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:823.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, Offices of Adult and Juvenile Services, LR 11:1093 (November 1985), amended by the Department of Public Safety and Corrections, Corrections Services, LR 31:

Family Impact Statement

In accordance with the Administrative Procedure Act, R.S. 49:953(A)(1)(a)(viii) and R.S. 49:972, the Department of Public Safety and Corrections, Corrections Services, hereby provides the Family Impact Statement.

Amendments of the current LAC 22:I:105, 317 and 329 by the Department of Public Safety and Corrections, Corrections Services, will have no effect on the stability of the family, on the authority and rights of parents regarding the education and supervision of their children, on the functioning of the family, on family earnings and family budget, on the behavior and personal responsibility of children or on the ability of the family or a local government to perform the function as contained in the proposed Rule amendments.

Interested persons may submit their comments in writing to Melinda L. Long, Attorney for Secretary Richard L. Stalder, LA Department of Public Safety and Corrections, P.O. Box 94304, Baton Rouge, LA 70804, until 8 a.m. on March 14, 2005.

Richard L. Stalder
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Air Traffic Regulation,
Attorney Visits, and Inmate Marriage Request**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no estimated costs or savings to state or local governmental units.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no estimated effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There is no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment.

B.E. "Trey" Boudreaux, III
Undersecretary
0502#015

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Public Safety and Corrections Office of Corrections Services

General Prohibited Behaviors (LAC 22:I.365)

In accordance with the provisions of R.S. 49:953(B) of the Administrative Procedure Act, the Department of Public Safety and Corrections, Office of Corrections establishes the following Rule relative to R.S. 15:823 which allows the department to make reasonable rules and regulations, and *Cassels v. Stalder*, 342 F. Supp. 2d 555. The Secretary of Public Safety and Corrections hereby adopts the following Rule by amending LAC 22:I.365.Y, Disciplinary Rules and Procedures for Adult Offenders.

This Rule fundamentally addresses the abridgment of an inmate's ability to communicate information (allegations) for the purpose of obtaining legal assistance. The current language was determined to be unconstitutional by the federal ruling on *Cassels*.

Title 22

CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

Part I. Corrections

Chapter 3. Adult and Juvenile Services

Subchapter B. Disciplinary Rules and Procedures for Adult Offenders

§365. Disciplinary Rules

A. - X. ...

Y. General Prohibited Behaviors (Schedule B): The following behaviors which may impair or threaten the security or stability of the unit or well being of an employee, visitor, guest, inmate or their families are prohibited:

1. - 10. ...

11. the communication of malicious, frivolous, false, and/or inflammatory statements or information, the purpose of which is reasonably intended to harm, embarrass, or intimidate an employee, visitor, guest, or inmate. This Rule shall not apply to information and/or statements communicated for the express purpose of obtaining legal assistance;

12. - 23. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:823, *Wolff v. McDonnell*, 94 S.Ct. 2963 (1974), *Ralph v. Dees*, C.A. 71-94, USDC (Md. La.) and *Sandin v. Conner*, 115 S.Ct. 2293 (1995). *Cassels v. Stalder*, 342 F. Supp. 2d 555.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Office of Adult Services, LR 27:419 (March 2001), amended by the Department of Public Safety and Corrections, Corrections Services, LR 31:

Family Impact Statement

In accordance with the Administrative Procedure Act, R.S. 49:953(A)(1)(a)(viii) and R.S. 49:972, the Department of Public Safety and Corrections, Corrections Services, hereby provides the Family Impact Statement.

Amendment of the current LAC 22:I:365.Y.11 by the Department of Public Safety and Corrections, Corrections Services, will have no effect on the stability of the family, on the authority and rights of parents regarding the education and supervision of their children, on the functioning of the family, on family earnings and family budget, on the

behavior and personal responsibility of children or on the ability of the family or a local government to perform the function as contained in the proposed Rule rescission.

Interested persons may submit their comments in writing to Melinda L. Long, Attorney for Secretary Richard L. Stalder, LA Department of Public Safety and Corrections, P.O. Box 94304, Baton Rouge, LA 70804, until 8 a.m. on March 14, 2005.

Richard L. Stalder
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: General Prohibited Behaviors

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no estimated costs or savings to state or local governmental units.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no estimated effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There is no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment.

B.E. "Trey" Boudreaux, III
Undersecretary
0502#016

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Public Safety and Corrections Office of Corrections Services

Public Information Program and Medical Reimbursement Plan (LAC 22:I.339, 2103, 2105)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.), the Department of Public Safety and Corrections, Corrections Services, hereby gives notice of its intent to amend the contents of §339: Public Information Program and Media Access, §2103: Applicability, and §2105: Medical Reimbursement Plan Pursuant to R.S. 15:831 (B)(1).

Within the Department of Public Safety and Corrections, the Office of Youth Development has been statutorily separated from the Office of Corrections Services. Therefore, Title 22 is being re-codified into two sections: adult offenders and juvenile offenders. The purpose of the amendments of the aforementioned regulations is to further this effort by reorganizing all policies deemed to be internal management or any policy that has since been written into an existing regulation.

Title 22
CORRECTIONS, CRIMINAL JUSTICE AND LAW
ENFORCEMENT
Part I. Corrections

Chapter 3. Adult Services

§339. Public Information Program and Media Access

A. ...

B. Applicability. Undersecretary, Assistant Secretaries, all Wardens, the Director of Probation and Parole, and the Director of Prison Enterprises. Each unit head shall develop procedures to facilitate interaction with the public, the media, and other agencies and shall ensure that necessary information and instructions are furnished to affected employees and inmates.

C. - D. ...

* * *

Unit Head The head of an operational unit, such as Wardens, the Director of Probation and Parole, or the Director of Prison Enterprises.

E. - E.1.a. ...

b. contact person for routine requests for information;

c. - f.

2. The unit head or designee shall facilitate all routine media inquiries, interview requests and/or correctional facility visits. Such requests must be made within a reasonable timeframe, considering the scope of the story and the unit's ability to adequately prepare for the visit. The unit head will give timely notice to the secretary, chief of operations, communications director, and assistance secretary as appropriate of any significant or potentially controversial event.

3. The unit head shall notify the secretary, chief of operations, communications director and assistant secretary as appropriate of national and international media requests made to the department upon receiving the request.

4. All media visitors will be provided with an escorting staff member for the duration of the visit.

5. Only those persons authorized by the secretary or unit head shall release information to the media regarding official matters. Authorized spokespersons shall be knowledgeable of issues and departmental policy and shall ensure the accuracy of information before releasing it.

6. In the event of an institutional emergency, all public and media access to the institution may be limited. The warden or his media relations designee will periodically brief all media on the situation. A media briefing center may be established at a remote location.

7. All on-site media contacts with inmates are at the sole discretion of the unit head.

8. Written permission should be obtained from an inmate prior to interviewing, photographing, and/or audio or video recording of the inmate. With reference to juvenile offenders, written permission must be obtained from the juvenile's parent, guardian, or attorney, (except when the juvenile is not identifiable). Death row inmates must also have their attorney's written approval prior to an interview, photograph, and/or audio or video recording. No remuneration will be provided to any inmate.

9. Interviews with inmates housed in maximum custody areas for behavioral problems and/or poor conduct records are discouraged.

10. Access to inmates should also be restricted or disallowed to prevent them from profiting from their crimes, either materially or through enhanced status as a result of media coverage.

F. - F.1.f ...

2. Written requests shall be forwarded to the secretary for final review prior to project commencement.

3. All commercial productions are required to read, understand and sign a Location Agreement Form upon their arrival at the unit. The location agreement will specifically outline the scope of the work to be performed. The unit head (or designee) may require review of the material prior to distribution solely to insure that it comports with the Location Agreement Form.

G. - J. ...

AUTHORITY NOTE: Promulgated in accordance with American Correctional Association (ACA) Standards 2-CO-1A-25 through 27-1 (Administration of Correctional Agencies) 3-4020 through 3-4022 (Adult Correctional Institutions).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 25:1260 (July 1999), amended LR 31:

Chapter 21. Medical Reimbursement Plan
§2103. Applicability

Applicability Deputy Secretary, Chief of Operations, Assistant Secretary, Wardens, and Administrators of local jail facilities. The unit head is responsible for implementation and continued adherence to this regulation and for conveying its contents to employees and inmates.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:831(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services LR 26:331 (February 2000), amended LR 31:

§2105. Medical Reimbursement Plan Pursuant to R.S. 15:831(B)(1)

A. Inmates Housed in State Institutions

1. Procedures concerning medical co-payments are outlined in Department Regulation No. B-06-001 "Health Care." Please see Health Care Policy No. HC - 13 "Health Screens, Appraisals and Examinations."

A.2. - B.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. R.S. 15:831(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 26:331 (February 2000), amended LR 26:2623 (November 2000), LR 31:

Family Impact Statement

In accordance with the Administrative Procedure Act, R.S. 49:953(A)(1)(a)(viii) and R.S. 49:972, the Department of Public Safety and Corrections, Corrections Services, hereby provides the Family Impact Statement.

Amendments of the current LAC 22:I. 339, 2103 and 2105 by the Department of Public Safety and Corrections, Corrections Services, will have no effect on the stability of the family, on the authority and rights of parents regarding the education and supervision of their children, on the functioning of the family, on family earnings and family budget, on the behavior and personal responsibility of children or on the ability of the family or a local government to perform the function as contained in the proposed Rule amendments.

Interested persons may submit their comments in writing to Melinda L. Long, Attorney for Secretary Richard L.

Stalder, LA Department of Public Safety and Corrections,
P.O. Box 94304, Baton Rouge, LA 70804, until 8 a.m. on
March 14, 2005.

Richard L. Stalder
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Public Information Program
and Medical Reimbursement Plan**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
There are no estimated costs or savings to state or local governmental units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There is no estimated effect on revenue collections of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There is no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There is no estimated effect on competition and employment.

B.E. "Trey" Boudreaux, III Robert E. Hosse
Undersecretary General Government Section Director
0502#018 Legislative Fiscal Office

NOTICE OF INTENT

**Department of Revenue
Policy Services Division**

Absorption of the Sales Tax by
Sellers of Taxable Goods and Services
(LAC 61:I.4311)

Under the authority of R.S. 47:304, R.S. 47:337.2, R.S. 47:337.17, 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, proposes to amend LAC 61:I.4311 relative to the absorption of sales and use tax by selling dealers.

This proposal amends LAC 61:I.4311.C and D, which pertain to the treatment of sales and use taxes collected by selling dealers as required by R.S. 47:304(F) and R.S. 47:337.17(F). Prior to July 1, 2001, R.S. 47:304(F) prohibited a vendor from advertising or holding out to the public in any way that he would absorb all or any portion of the tax collectable from customers. Act 245 of the 2001 Regular Legislative Session amended R.S. 47:304(F) to allow dealers to absorb the sales tax under certain conditions. Act 73 of the 2003 Regular Session enacted R.S. 47:337.17(F), which imposed similar conditions for the absorption of local sales and use taxes. These proposed amendments describe the requirements necessary for a dealer to absorb the tax.

Title 61

REVENUE AND TAXATION

**Part I. Taxes Collected and Administered
by the Secretary of Revenue**

Chapter 43. Sales and Use Tax

§4311. Treatment of Tax by Dealer

A. - B. ...

C. Sellers, as far as practical, must separately list the sales tax from the selling price or payment for the goods or services sold. Sellers are prohibited from absorbing all or any part of the tax except when all of the following conditions are met.

1. Customers must be notified prior to the sale that the seller will remit the tax due to the appropriate taxing jurisdiction. Advertising through newspapers, magazines, television or radio commercials, billboards, and in-store displays or brochures are considered adequate notification. Oral comments made to customers immediately prior to the sale are not adequate notification to satisfy this requirement.

2. The dealer must absorb the tax for all of the customers from a predetermined class of purchases. Privately agreeing to absorb the tax for a particular customer in order to secure a sale is prohibited.

3. The sales invoices or receipts given to customers must list the amount of tax that would have been collected and include a statement that the seller will pay the tax to the appropriate taxing jurisdiction on behalf of the customer.

D. Sellers that violate the provisions of LAC 61:I.4311.C are subject to fines and imprisonment as provided for in R.S. 47:304(F)(3) and R.S. 47:337.17(F)(3).

E. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:304, R.S. 47:337.2, R.S. 47:337.17, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987), amended by the Department of Revenue, Policy Services Division, LR 30:2867 (December 2004), LR 31:

Family Impact Statement

As required by Act 1183 of the 1999 Regular Session of the Louisiana Legislature the following Family Impact Statement is submitted to be published with the Notice of Intent in the *Louisiana Register*. A copy of this statement will also be provided to our legislative oversight committees.

1. The Effect on the Stability of the Family. Implementation of these proposed amendments will have no effect on the stability of the family.

2. The Effect on the Authority and Rights of Parents Regarding the Education and Supervision of Their Children. Implementation of these proposed amendments will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect on the Functioning of the Family. Implementation of these proposed amendments will have no effect on the functioning of the family.

4. The effect on Family Earnings and Family Budget. Implementation of these proposed amendments will have no effect on family earnings and family budget.

5. The Effect on the Behavior and Personal Responsibility of Children. Implementation of these proposed amendments will have no effect on the behavior and personal responsibility of children.

6. The Ability of the Family or a Local Government to Perform the Function as Contained in the Proposed Rule. Implementation of these proposed amendments will have no effect on the ability of the family or a local government to perform this function.

Interested persons may submit data, views, or arguments, in writing to Raymond E. Tangney, Senior Policy Consultant, Policy Services Division, P.O. Box 44098, Baton Rouge, LA 70804-4098 or by fax to (225) 219-2759. All comments must be submitted by 4:30 p.m., Monday, March 28, 2005. A public hearing will be held on Tuesday, March 29, 2005, at 10:00 a.m. at the Department of Revenue Headquarters Building, 617 North Third Street, Baton Rouge, LA.

Raymond E. Tangney
Senior Policy Consultant

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Absorption of the Sales Tax by
Sellers of Taxable Goods and Services**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There would be no implementation costs or savings to state or local authorities for this proposal.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
OR LOCAL GOVERNMENTAL UNITS (Summary)**

There would be no effect on revenue collections of state or local governmental units as a result of this proposed amendment.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

This proposed rule would have no effect on costs or benefits to Louisiana dealers that sell goods and services subject to sales tax because vendors may elect to absorb the sales tax collectable from customers.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

This proposed amendment would ensure equal competition among dealers in goods and services subject to sales tax because it clarifies the conditions that must be satisfied for sellers to absorb the tax. This proposed amendment would have no effect on employment.

Cynthia Bridges
Secretary
0502#029

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Revenue
Policy Services Division**

Absorption of the Sales Tax by Sellers of
Taxable Goods and Services
(LAC 61:I.4351)

Under the authority of R.S. 47:306, R.S. 47:337.2, R.S. 47:337.18, 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, proposes to amend LAC 61:I.4351 relative to the absorption of sales and use tax by selling dealers.

This proposal amends LAC 61:I.4351, which describes the procedures for filing sales tax returns and remitting the tax collected from customers. LAC 61:I.4351.A.6 references R.S. 47:304(F) and LAC 61:I.4311.C regarding the penalty for absorption of the sales tax by a selling dealer. Prior to July 1, 2001, R.S. 47:304(F) prohibited a vendor from advertising or holding out to the public in any way that he would absorb all or any portion of the tax collectable from customers. Act 245 of the 2001 Regular Legislative Session amended R.S. 47:304(F) to allow dealers to absorb the sales tax under certain conditions. Act 73 of the 2003 Regular Session enacted R.S. 47:337.17(F), which imposed similar conditions for the absorption of local sales and use taxes. This proposal amends LAC 61:I.4351.A.6 to concur with the provisions in these statutes that allow for absorbing the tax.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered by the

Secretary of Revenue

Chapter 43. Sales and Use Tax

**§4351. Returns and Payment of Tax, Penalty for
Absorption of the Tax**

A. - A.5. ...

6. Except as provided in R.S. 47:304(F)(1), R.S. 47:337.17(F)(1), and LAC 61:I.4311.C, dealers or sellers must separately list the sales tax from the price paid by the purchaser. Otherwise, the absorption of the tax by any retailer, wholesaler, manufacturer, or other supplier shall be punished in accordance with R.S. 47:304(F)(3) and R.S. 47:337.17(F)(3).

B. - C.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:306.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987), amended by the Department of Revenue and Taxation, Sales Tax Division, LR 22:852 (September 1996), amended by the Department of Revenue, Sales Tax Division, LR 23:1530 (November 1997), amended by the Department of Revenue, Policy Services Division, LR 31:

Family Impact Statement

As required by Act 1183 of the 1999 Regular Session of the Louisiana Legislature the following Family Impact Statement is submitted to be published with the notice of intent in the *Louisiana Register*. A copy of this statement will also be provided to our legislative oversight committees.

1. The Effect on the Stability of the Family. Implementation of these proposed amendments will have no effect on the stability of the family.

2. The Effect on the Authority and Rights of Parents Regarding the Education and Supervision of Their Children. Implementation of these proposed amendments will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect on the Functioning of the Family. Implementation of these proposed amendments will have no effect on the functioning of the family.

4. The effect on Family Earnings and Family Budget. Implementation of these proposed amendments will have no effect on family earnings and family budget.

5. The Effect on the Behavior and Personal Responsibility of Children. Implementation of these

proposed amendments will have no effect on the behavior and personal responsibility of children.

6. The Ability of the Family or a Local Government to Perform the Function as Contained in the Proposed Rule. Implementation of these proposed amendments will have no effect on the ability of the family or a local government to perform this function.

Interested persons may submit data, views, or arguments, in writing to Raymond E. Tangney, Senior Policy Consultant, Policy Services Division, P.O. Box 44098, Baton Rouge, LA 70804-4098 or by fax to (225) 219-2759. All comments must be submitted by 4:30 p.m., Monday, March 28, 2005. A public hearing will be held on Tuesday, March 29, 2005, at 10 a.m. at the Department of Revenue Headquarters Building, 617 North Third Street, Baton Rouge, LA.

Raymond E. Tangney
Senior Policy Consultant

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Absorption of the Sales Tax by
Sellers of Taxable Goods and Services**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There would be no implementation costs or savings to state or local authorities because of this proposal.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
OR LOCAL GOVERNMENTAL UNITS (Summary)**

There would be no effect on revenue collections of state or local governmental units as a result of this proposed amendment.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

This proposed rule would have no effect on dealers' costs or revenues. The proposed amendments describe the conditions under which dealers can voluntarily absorb the sales tax due from their customers on sales of goods and services.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

This proposed amendment would ensure equal competition among dealers because it clarifies those conditions that must be satisfied before sellers can absorb the tax. This proposed amendment would have no effect on employment.

Cynthia Bridges
Secretary
0502#030

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Revenue
Policy Services Division**

**Reporting Format for Local Sales Tax Return
(LAC 61:II.101)**

Under the authority of R.S. 47:337.2, R.S. 47:337.22, 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, proposes to repeal LAC 61:II.101, pertaining to the reporting format

for local sales tax returns, to comply with the provisions of Act 73 of the 2003 Regular Legislative Session.

Revised Statutes 33:2713.1, 2737(G), and 2741.1 required the Department of Revenue to adopt a standard sales and use tax reporting format for local taxing jurisdictions within the state. Act 73 of the 2003 Regular Legislative Session, which created the Uniform Local Sales and Use Tax Code, repealed these statutes. The Act also enacted R.S. 47:337.22 assigning the authority for designing a standard form for reporting local sales and use taxes to the Uniform Electronic Local Return and Remittance Advisory Committee. LAC 61:II.101 is being repealed in accordance with the repeal of the authorizing statutes, R.S. 33:2713.1, 2737(G), and 2741.1, and the enactment of R.S. 47:337.22.

Title 61

REVENUE AND TAXATION

Part II. Taxes Collected and Administered

by Local Subdivisions

Chapter 1. Sales and Use Tax

§101. Reporting Format

Repealed.

AUTHORITY NOTE: Repealed in accordance with R.S. 47:337.2, R.S. 47:337.22, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Division, LR 18:287 (March 1992), repealed by the Department of Revenue, Policy Services Division, LR 31:

Family Impact Statement

As required by Act 1183 of the 1999 Regular Session of the Louisiana Legislature the following Family Impact Statement is submitted to be published with the notice of intent in the Louisiana Register. A copy of this statement will also be provided to our legislative oversight committees.

1. The Effect on the Stability of the Family. The proposed repeal of this regulation 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 repeal of this regulation 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 repeal of this regulation will have no effect on the functioning of the family.

4. The effect on Family Earnings and Family Budget. The proposed repeal of this regulation will have no effect on family earnings and family budget.

5. The Effect on the Behavior and Personal Responsibility of Children. The proposed repeal of this regulation 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 proposed repeal of this regulation will have no effect on the ability of the family or a local government to perform this function.

Interested persons may submit data, views, or arguments, in writing to Raymond E. Tangney, Senior Policy Consultant, Policy Services Division, P.O. Box 44098, Baton Rouge, LA 70804-4098 or by fax to (225) 219-2759. All comments must be submitted by 4:30 p.m., Monday, March 28, 2005. A public hearing will be held on Tuesday, March 29, 2005, at 1:30 p.m. at the Department of Revenue

Headquarters Building, 617 North Third Street, Baton Rouge, LA.

Raymond E. Tangney
Senior Policy Consultant

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Reporting Format for
Local Sales Tax Return**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

Under LAC 61:II.101, the Secretary of Revenue prescribed the format of local returns in accordance with R.S. 33:2713.1, 2737(G), and 2741.1. Acts 2003, No. 73 repealed these statutes and assigned the responsibility for developing a uniform local return to the Uniform Electronic Local Return and Remittance Advisory Committee under R.S. 47:337.22. The regulation is being repealed due to the repeal of its authorizing statutes and because it conflicts with R.S. 47:337.22. The Department of Revenue will develop the programming for the remittance system provided under R.S. 47:337.22, however those costs are independent from the repeal of this regulation. The repeal of

this regulation will have no effect on state or local governmental unit costs.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
OR LOCAL GOVERNMENTAL UNITS (Summary)**

There should be no effect on the revenue collections of state or local governmental units as a result of this proposed repeal. The repeal of LAC 61:II.101 reflects the current administration of state and local sales and use tax laws.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

The proposed repeal will have no effect on economic costs or benefits to Louisiana taxpayers since it does not alter the manner in which state or local sales and use tax laws are administered.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

These proposed amendments will have no effect on competition or employment.

Cynthia Bridges
Secretary
0502#031

H. Gordon Monk
Staff Director
Legislative Fiscal Office

Potpourri

POTPOURRI

Department of Agriculture and Forestry Horticulture Commission

Landscape Architect Registration Exam

The next landscape architect registration examination will be given June 13-14, 2005, beginning at 7:45 a.m. at the College of Design Building, Louisiana State University Campus, Baton Rouge, LA. The deadline for sending the application and fee is as follows.

New Candidates:	February 18, 2005
Re-Take Candidates:	March 4, 2005
Reciprocity Candidates:	April 29, 2005

Further information pertaining to the examinations may be obtained from Craig Roussel, Director, Horticulture Commission, P.O. Box 3596, Baton Rouge, LA 70821-3596, phone (225) 952-8100.

Any individual requesting special accommodations due to a disability should notify the office prior to February 18, 2005. Questions may be directed to (225) 952-8100.

Bob Odom
Commissioner

0502#007

POTPOURRI

Department of Agriculture and Forestry Horticulture Commission

Retail Floristry Examination

The next retail floristry examinations will be given May 2-6, 2005, 9:30 a.m. at the 4-H Mini Farm Building, Louisiana State University Campus, Baton Rouge, LA. The deadline for sending in application and fee is March 18, 2005. No applications will be accepted after March 18, 2005.

Further information pertaining to the examinations may be obtained from Craig Roussel, Director, Horticulture Commission, Box 3596, Baton Rouge, LA 70821-3596, phone (225) 952-8100.

Any individual requesting special accommodations due to a disability should notify the office prior to March 18, 2005. Questions may be directed to (225) 952-8100.

Bob Odom
Commissioner

0502#026

POTPOURRI

Department of Environmental Quality Office of Environmental Assessment Air Quality Assessment Division

2004 State Implementation Plan (SIP) General Revisions

Under the authority of the Environmental Quality Act, R.S. 30:2051 et seq., the secretary gives notice of proposed general revisions to the air quality State Implementation Plan (SIP). The revisions include amendments to various air quality rules in LAC 33:III.Chapters 2 and 21 that were previously promulgated in 2004, and that were not previously included in other revisions to the SIP.

A public hearing will be held on March 29, 2005, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room C111, 602 N. Fifth Street, Baton Rouge, Louisiana. 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 Judith A. Schuerman, Ph.D., Office of Environmental Assessment, Regulation Development Section, Box 4314, Baton Rouge, LA 70821-4314 or at (225) 219-3550. Free parking is available across the street in the Galvez parking garage when the parking ticket is validated by department personnel at the hearing.

All interested persons are invited to submit written comments on the proposed 2004 SIP general revisions. Comments must be submitted no later than 4:30 p.m. on April 5, 2005. Comments should be mailed to Sandra Hilton, Office of Environmental Assessment, Air Quality Assessment Division, Box 4314, Baton Rouge, LA 70821-4314 or faxed to (225) 219-3582. Copies of this document can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. A check or money order is required in advance for each copy of the document.

A copy of the general revisions to the SIP may be viewed Monday through Friday, from 8 a.m. to 4:30 p.m., at the following DEQ locations: 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; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.louisiana.gov/planning/regs/index.htm>.

Summary of Rules Promulgated in 2004		
LAC 33:III	Louisiana Register Citation	Description
§223	July 2004 LR 30:1475 AQ 243	Fee Rule
Comment: Adds a new fee number to differentiate between Title V and other facilities for criteria pollutant fees		
§2121	August 2004 LR 30:1659 AQ 237	Fugitive Emission Control
Comment: Clarifies requirements for instrumentation systems and other changes to make state regulations more consistent with 40 CFR 63 fugitive rules		
§2122	August 2004 LR 30:1659 AQ 237	Fugitive Emission Control In Nonattainment Area
Comment: Clarifies requirements for instrumentation systems and other changes to make state regulations more consistent with 40 CFR 63 fugitive rules		

Wilbert F. Jordan, Jr.
Assistant Secretary

0502#062

POTPOURRI

Department of Environmental Quality Office of Environmental Assessment

Disposal of Oil and Gas Exploration and Production (E&P) Waste in Solid Waste Landfills

In November 2001 the Louisiana Department of Natural Resources (DNR) promulgated rules that allowed E&P waste to be received, stored, treated and/or disposed at a regulated facility permitted by the Department of Environmental Quality (DEQ) under the standards of LAC 33.Parts V and VII. Additionally, an independent report in July 2004 of the review of Louisiana's E&P waste regulations by the nonprofit organization State Review of Oil and Natural Gas Environmental Regulations, Inc. (STRONGER) recommended that "the DEQ consider allowing the disposal of E&P wastes at solid waste landfills" under certain criteria (Review Finding and Recommendation V.7).

E&P waste is considered a new waste stream for DEQ permitted facilities. The waste stream has primarily been regulated by DNR. If DEQ should allow the waste stream to enter the solid waste universe, there will be some shared responsibility with DNR regarding disposal management. To assist DEQ with the identification of technical and economic issues associated with the disposal of E&P wastes, DEQ is soliciting comments on minimum standard requirements and other relevant information for waste acceptance at DEQ regulated solid waste facilities. The proposed minimum standards currently under consideration are:

- **Required Waste Testing**—Waste should be analyzed for Toxicity Characteristic Leachate Procedure to ensure that the waste is nonhazardous.

- **Solid Waste Facility Criteria**—E&P waste can only be managed at Type 1 facilities (facilities that take industrial solid waste for disposal).
- **Permit Requirements**—Facilities must apply to DEQ for a permit modification to receive authorization to accept such wastes. This would be considered a major modification of the permit, which would require public comment and possibly a public hearing.
- **Responsibility for DEQ**—If disposed at a DEQ regulated facility, E&P waste would become the regulatory responsibility of DEQ upon receipt by the disposal facility. DEQ's authority would only be for the waste disposed in a landfill upon the date of any regulations promulgated.
- **Waste Tracking and Liability**—The current manifesting and "cradle-to-grave" liability requirements under the DNR rules would remain in place.

DEQ requests all interested parties submit comments on the following questions.

- Will solid waste Type I facilities be willing to accept this new waste stream?
- Will any of the listed waste streams cause any odor problems?
- Will the possible presence of chlorides in an individual waste stream cause problems with the landfill's leachate collection and/or water treatment facilities?
- Should DEQ limit acceptance to only certain types of E&P wastes?
- Is there any beneficial use of this waste stream at the landfill?
- What are the expected environmental advantages and/or disadvantages of the rules under consideration?
- What is the potential implementation costs (increase or decrease) for E&P waste generators and landfills, both solid waste and DNR facilities?
- Is there any other information you desire to offer?

Resource links regarding this issue are as follows:

- **STRONGER Home Page:**
<http://www.strongerinc.org>
- **2000 STRONGER E&P Waste Review Guidelines** (on which the July 2004 LA Review Report was based):
http://www.strongerinc.org/pdf/Final_Guidelines.pdf
- **STRONGER Louisiana Report July 2004:**
<http://www.strongerinc.org/pdf/Final LA Report.pdf>
- **Office of Conservation Link for E&P wastes:**
<http://dnr.louisiana.gov/CONS/CONSERIN/Waste.ssi>

Comments are due no later than 4:30 p.m., April 1, 2005, and should be submitted to Sharon Parker, Office of Environmental Assessment, Regulation Development Section, Box 4314, Baton Rouge, LA 70821-4314 or to FAX (225) 219-3582 or by e-mail to sharon.parker@la.gov.

Wilbert F. Jordan, Jr.
Assistant Secretary

0502#063

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
McCormick-Bintliff-Pettit	Live Oak	L	Fred Stovall Est	1	148994
Caddo Oil Co., Inc.	Wildcat	S	Lelong	1	142922
Caddo Oil Co., Inc.	Wildcat	S	Lelong	4	144010
Brazos River LLC	Rabbit Island	L	SL 340	5	218167
Brazos River LLC	Rabbit Island	L	SL 340	9	220809
Tommy Neal & Associates	Port Barre	L	Haas-Hirsch	2	079154 (28)
Tommy Neal & Associates	Port Barre	L	Haas-Hirsch	2-D	081750 (28)
Grubb & Hawkins	Port Barre	L	Clara G Fontenot et al	1	027451 (30)
L. W. Storms, Jr.	Edgerly	L	Wilson Broach	1	049114 (28)
L. W. Storms, Jr.	Edgerly	L	Wilson Broach Fee B	3	060318 (28)
Fifteen Oil Company	Lafourche Crossing	L	Martinez	1	022337 (28)
H.L. Hawkins & H.L. Hawkins, Jr.	Port Barre	L	Watkins	1	025511 (30)
Sam Sklar	Eola	L	Sclater	1	023297
Great Southern Oil & Gas Co., Inc.	Abbeville	L	FAULK RA SUC; M A Broussard	2	207812 (30)
McCulloch Oil Corporation	Boston Bayou	L	Vermilion Bay Land Co	1	133717

James H. Welsh
Commissioner

0502#050

POTPOURRI

**Department of Natural Resources
Office of the Secretary
Fishermen's Gear Compensation Fund**

Loran Coordinates

In accordance with the provisions of R.S. 56:700.1 et seq., notice is given that 20 claims in the amount of \$72,129.51 were received for payment during the period December 1, 2004 - January 31, 2005.

There were 19 claims paid and 1 claim denied.

Loran Coordinates of reported underwater obstructions are:

27638 46932 St. Mary
Latitude/Longitude Coordinates of reported underwater obstructions are:

2859.830	8907.820	Plaquemines
2902.912	9022.810	Lafourche
2908.313	9056.307	Terrebonne
2908.910	9056.040	Terrebonne
2910.226	9040.804	Terrebonne
2913.485	8949.572	Jefferson
2915.801	8957.696	Jefferson
2917.040	9043.041	Terrebonne
2917.318	8941.413	Plaquemines
2918.274	8954.946	Jefferson
2920.360	8959.200	Jefferson
2921.503	8959.114	Jefferson
2923.290	8958.304	Jefferson
2927.376	8959.141	Jefferson
2930.249	9003.325	Jefferson
2940.068	8955.091	Plaquemines
2946.090	8913.420	St. Bernard
2949.534	8916.111	St. Bernard
3002.771	9319.828	Cameron

A list of claimants and amounts paid can be obtained from Verlie Wims, Administrator, Fishermen's Gear Compensation Fund, P.O. Box 44277, Baton Rouge, LA 70804 or you can call (225) 342-0122.

Scott A. Angelle
Secretary

0502#065

POTPOURRI

**Department of Social Services
Office of Family Support**

**Temporary Assistance to Needy Families (TANF)
Caseload Reduction Report for Louisiana**

The Department of Social Services, Office of Family Support, hereby gives notice that, in accordance with federal regulations at 45 CFR 261.40, the Temporary Assistance to Needy Families (TANF) Caseload Reduction Report for Louisiana is now available to the public for review and comment.

In order to receive a caseload reduction credit for minimum participation rates, the agency must submit a report based on data from the Strategies to Empower People Program (STEP) containing the following information:

1. a listing of, and implementation dates for, all state and federal eligibility changes, as defined at §261.42, made by the state since the beginning of FY 1995;
2. a numerical estimate of the positive or negative impact on the applicable caseload of each eligibility change (based, as appropriate, on application denials, case closures, or other analyses);

3. an overall estimate of the total net positive or negative impact on the applicable caseload as a result of all such eligibility changes;

4. an estimate of the state's caseload reduction credit;

5. the number of application denials and case closures for fiscal year 1995 and the prior fiscal year;

6. the distribution of such denials and case closures, by reason, for fiscal year 1995 and the prior fiscal year;

7. a description of the methodology and the supporting data that it used to calculate its caseload reduction estimates;

8. a certification that it has provided the public an appropriate opportunity to comment on the estimates and methodology, considered their comments, and incorporated

all net reductions resulting from federal and state eligibility changes; and

9. a summary of all public comments.

Copies of the TANF Caseload Reduction Report may be obtained by writing Tara Nelson, Department of Social Services, Office of Family Support, P.O. Box 94065, Baton Rouge, LA 70804-9065, by telephone at (225) 342-4096, or via E-mail at tnelson@dss.state.la.us.

Written comments regarding the report should also be directed to Ms. Nelson. These must be received by close of business on March 20, 2005.

Ann Silverberg Williamson
Secretary

0502#066

CUMULATIVE INDEX
(Volume 31, Number 2)

Pages	2005	Issue
1 - 383.....		January
384 - 609.....		February
EO Executive Order PPM Policy and Procedure Memoranda ER Emergency Rule R Rule N Notice of Intent CR Committee Report GR Governor's Report L Legislation P Potpourri		

ADMINISTRATIVE CODE UPDATE

Cumulative

January 2004 **C** December 2004, 372

AGRICULTURE AND FORESTRY

Agriculture and Environmental Sciences, Office of Structural Pest Control Commission

Structural pest control, 26R
Termiticides and manufacturers, 376P

Agro-Consumer Services

Chloramphenicol in crabs/crabmeat, 387ER
honey, 390ER
shrimp/crawfish, 392ER
Petroleum product specifications, 27R

Animal Health Services, Office of

Meat and poultry inspection, 8ER

Commissioner, Office of the

Motor vehicle fuels, 112N
Overtime and holiday inspection service, 115N

Forestry, Office of

Timber stumpage values, 376P

Horticulture Commission

Landscape architect registration exam, 376P, 603P
Landscape irrigation contractors licensing, 110N
Retail floristry examination, 603P

Livestock Sanitary Board

Public livestock auction charters, 419R

Seed Commission

Bulk seed, 35R
Certification standards, 419R

State Market Commission

Market bulletin subscriber fee, 26R
Meat grading and certification, 8ER, 116N

CIVIL SERVICE

Ethics, Board of

Executive branch lobbying, 117N

ECONOMIC DEVELOPMENT

Auctioneers Licensing Board

Licensing/Bonds, 489N

Business Development, Office of

EDAP Award Program, 146N
EDLOP Loan Program, 146N

Secretary, Office of the

Governor's Economic Development Rapid Response Program, 420R

EDUCATION

Elementary and Secondary Education, Board of Bulletin 111

Accountability, 423R, 494N

Bulletin 741

Codification of Bulletin 741, 495N

Bulletin 746

PRAXIS exams/passing scores, 425R
Donation of

Immovables, 557N
Movables, finance, property, 558N

Student Financial Assistance Commission

Student Financial Assistance, Office of
Scholarship/Grants Program
Legislation 2004, 36R
Rockefeller Scholarship, 9ER, 157N

ENVIRONMENTAL QUALITY

Environmental Assessment/Environmental Planning Division, Office of

Activities list, insignificant, 564N
Air regulations, 567N
Baton Rouge rate of progress/SIP, 377P
Baton Rouge vehicle miles traveled/SIP, 378P
Bayou Anacoco subsegment, 159N
Certified solid waste operator, 43R
Cooling water intake, 425R
Cypress Island Coulee Wetland, 157N
Emissions estimation methods, 15ER
Expedited penalty agreement, 10ER, 396ER
Incorporation by reference-2004, 561N
Medical events occurring from x-rays, 565N
Medical physicist/event, authorized, 560N
NCR authorization cleanup package, 44R
Numerous criterion of sulfates, 159N
SIP general revisions, 603P
Solid waste landfills, 604P
Transportation conformity, IBR, 161N

EXECUTIVE ORDERS

KBB 04-58 **C**Bond Allocation **C**Louisiana Public Facilities Authority, 1EO
KBB 04-59 **C**Bond Allocation **C**Louisiana Public Facilities Authority, 1EO
KBB 04-60 **C**Bond Allocation **C**Denham Springs/Livingston Housing and Mortgage Finance Authority, 2EO
KBB 04-61 **C**Bond Allocation **C**Calcasieu Parish Public Trust Authority, 2EO
KBB 04-62 **C**Bond Allocation **C**East Baton Rouge Mortgage Finance Authority, 3EO
KBB 04-63 **C**Bond Allocation **C**Industrial District No. 3 of the Parish of West Baton Rouge, State of Louisiana, 4EO
KBB 04-64 **C**Bond Allocation **C**Industrial Development Board of the Parish of Calcasieu, Inc., 4EO
KBB 04-65 **C**2004 Carry-Forward Bond Allocation **C**Louisiana Public Facilities Authority **C**Student Loan Revenue Bonds, 5EO
KBB 04-66 **C**2004 Carry-Forward Bond Allocation **C**Louisiana Housing Finance Agency Multi-Family Mortgage Revenue Bond Program, 6EO
KBB 05-01 **C**Homeland Security Advisory Council, 6EO
KBB 05-02 **C**Louisiana Task Force on Workforce Competitiveness, 384EO
KBB 05-03 **C**The Board of Parole, 385EO

GOVERNOR

Administration, Division of
Facility Planning and Control, Office of
Capital improvement projects, 568N
Group Benefits, Office of
EPO Plan of Benefits
Hearing aids/minor dependents, 439R
MCO Managed Care Option
Hearing aids/minor dependents, 440R
PPO Plan of Benefits
Hearing aids/minor dependents, 441R
Risk Management, Office of
Claims, reporting of, 56R
Boxing and Wrestling Commission
Emergency medical tech requirement, 401ER
Standards, 402ER
Crime Victims Reparations Board
Award limits, 568N
Motor Vehicle Commission
Motor vehicle sales finance, 162N
New Orleans/Baton Rouge Steamship Pilots, Board Examiners for the
Mandatory rest period, 16ER, 55R
Racing Commission
Corrupt and prohibited practices, 407ER
Human recombinant erythropoietin and/or darbepoietin, 407ER
Vesting of title; tests, 407ER

HEALTH AND HOSPITALS

Citizens with Developmental Disabilities, Office of
At-risk juveniles pilot programs, 86R
Dentistry, Board of
Dental assistants/hygienists/anesthesia/analgesia, 168N
Medical Examiners, Board of
Licensing and practice, 73R
Physician assistants, 73R
Nursing, Board of
Anesthesia, administration of, 169N
Licensure advanced practice registered nurse, 408ER, 575N
Nursing practice definitions, 169N
Physical Therapy Examiners, Board of
Services without prescription/referral, 441R
Psychologists, Board of Examiners of
Certificate of prescriptive authority, 70R
Secretary, Office of the
Health Services Financing, Bureau of
Children's respite care centers, 442R
Durable Medical Equipment Program
Adult Denture Program, 80R
Hyperalimentation therapy, 81R
Reimbursement/prior authorization, 85R
Early and Periodic Screening, Diagnosis and Treatment Program
Early intervention services for infants/toddlers with disabilities, 416ER
Health services, 16ER
Health care facilities sanctions, 170N
Hospital(s)
Disproportionate share hospital
Payment methodologies, 410ER
Licensing standards, 576N
ICF-MR (Intermediate Care Facility-Mentally Retarded)
Standards for payment, 171N, 581N
Mental Health Rehabilitation Services
Sanctions, 86R
Pharmacy Benefits Management Program
Narcotics and controlled substances, 176N
Professional Services Program
Circumcision reimbursement termination, 177N
Physician services reimbursement, 178N
Targeted case management, 417ER
Third party liability, newborn notification, 582N
Urine drug screening labs, 584N
Veterinary Medicine, Board of
Board nominations, 378P

INSURANCE

Commissioner, Office of the
Continuing education, 584N
Domestic insurer, 589N
Limited licensing for motor vehicle rental companies, 179N
Long-term care insurance, 461R
Newborn children dependent coverage, 586N

LABOR

Workers' Compensation, Office of
Medical reimbursement schedule, 182N

NATURAL RESOURCES

Conservation, Office of
Orphaned oilfield sites, 378P, 605P
Secretary, Office of the
Fisherman's Gear Compensation Fund,
Loran coordinates 605P

PUBLIC SAFETY AND CORRECTIONS

Correction Services, Office of
Adult/Juvenile services, 594N
Air traffic, attorney visits, inmate marriage, 594N
Medical Reimbursement Plan, 597N
Prohibitive behaviors, 19ER, 597N
Public Information Program, 597N

Gaming Control Board

Electronic gaming devices, 360N

State Police, Office of

Ignition interlock devices, 365N

REVENUE AND TAXATION

Policy Services Division

Corporation franchise tax, 90R
Sales/Use tax
Collector's authority
to determine tax, 88R
to examine records, 89R
Dealers required to keep records, 90R
Electronic funds transfer, 483R
Exemptions
Admissions to entertainment, 88R
Lease/rental tax, helicopters, 91R
Little theatre tickets, 92R
Mardi Gras specialty items, 93R
Motion picture film rental, 93R
Nonprofit organizations, 94R
Pesticides used for agricultural purposes, 95R
Property purchased outside the state, 95R
Property used in interstate commerce, 97R
Seeds used in planting crops, 99R
Tickets to musical performances, 99R
Failure to pay tax
Grounds for attachment, 91R
Rule to cease business, 92R
Nonresident contractors, 94R
Sales returned to dealer; credit/refund of tax, 97R
Sales tax refund for loss by natural disaster, 98R
Sales tax return reporting format, 601N
Sellers of taxable goods and services, 599N, 600N
Termination or transfer of a business, 100R
Wholesalers/Jobbers recordkeeping, 100R

Tax Commission

Timber stumpage values, 376P

SOCIAL SERVICES

Community Services, Office of
Daycare reimbursement rates, 101R
Developmental/Socialization Program, 484R
Louisiana's Emergency Shelter Grants Program 2005
Anticipated funds availability, 378P
Family Support, Office of
CCAP Immunization/age verification, 101R
FITAP Disability definition/time limits, 102R
Food Stamp Program
Utility allowance, 417ER
SES Judicial suspension of licenses, 366N
STEP Program, 102R
TANF initiatives, 19ER
Adoptions, amendments, repeals, 484R
Caseload reduction report, 605P
Developmental/Socialization Program, 488R

TRANSPORTATION AND DEVELOPMENT

Highways/Engineering, Office of

Outdoor advertising, control of, 380P
Pipe bursting/crushing, 105R
Vegetation visibility permits, 104R

TREASURY

Louisiana State Employees' Retirement System

Deferred Retirement Option Plan (DROP)
Interest, 22ER, 368N
Emergency refunds, 107R
Trustee candidate nominating petitions, 368N

WILDLIFE AND FISHERIES

Aquatic Invasive Species Task Force

State management plan, 380P

Wildlife and Fisheries Commission

Abandoned crab traps, removal, 108R
King mackerel, 23ER
Licenses, special and fee waivers, 369N
Red snapper, 23ER
Reef fish, 24ER
Shrimp
Closure, 25ER
Fall, Zone 1, 23ER