

# Notices of Intent

## NOTICE OF INTENT

### Department of Agriculture and Forestry Office of the Commissioner

#### Pet Turtles (LAC 7:XXI.Chapter 23)

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry proposes to amend regulations regarding the requirements for the operation and licensing for the farming and selling of Louisiana pet turtles.

The Department of Agriculture and Forestry is amending these rules and regulations to insure that pet turtle farmers upgrade their facilities to assist the industry in its efforts to lift the FDA ban that was imposed on the sale of pet turtles in the United States and to increase the industry's ability to control *Salmonella spp.* These rules comply with and are enabled by R.S. 3:2358.2.

No preamble concerning the proposed rules is available.

#### Title 7

#### Agriculture and Animals

#### Part XXI. Diseases of Animals

#### Chapter 23. Pet Turtles

#### §2301. Definitions

In addition to the definitions listed below, the definitions in R.S. 3:2358.3 shall apply to these regulations.

*Agent* an authorized representative of the Department of Agriculture and Forestry.

*Approved Antibiotic* an antibiotic approved by the Department of Agriculture and Forestry for use in the Egg Immersion Method.

*Approved Antibiotic Solution* a dissolved antibiotic at a concentration approved by the Department of Agriculture and Forestry for use in the Egg Immersion Method.

*Bactericide* any organic or inorganic substance, chemical, or compound that has the capacity to kill microorganisms.

*Licensed Pet Turtle Farmer* a Louisiana individual, partnership, corporation or entity engaged in the collection, hatching, sale or distribution of turtles or turtle eggs using the Egg Immersion Method and who has been licensed by the Department of Agriculture and Forestry.

*Chlorine Solution* a solution of chlorine at a concentration approved by the Department of Agriculture and Forestry.

*Department* the Department of Agriculture and Forestry.

*Department-issued Guidelines* a document provided periodically by the Department of Agriculture and Forestry setting forth detailed procedures designed to implement these regulations.

*Dip Solution* an approved antibiotic solution as defined above.

*Document* any form or document deemed necessary by the department for the operation of a Louisiana Pet Turtle Farm.

*Egg Immersion Method* a sanitization process derived from the Siebeling method developed by Dr. Ronald J. Siebeling and approved by the department whereby pet turtle eggs are cleaned, disinfected and treated with an approved antibiotic solution in order to render the hatchling free from Salmonella or other bacteria harmful to humans or other pet turtles.

*Egg Washing Machine* a machine intended for the washing of turtle eggs, or modified from a machine intended for the washing of eggs of commercial poultry.

*Exporter* a person who is licensed by the U.S. Fish and Wildlife Service to engage in the business of exporting groups of turtles or groups of turtle eggs.

*Farmer-Exporter* a licensed pet turtle farmer that is also licensed by the U.S. Fish and Wildlife Service to engage in the business of exporting groups of turtles or groups of turtle eggs.

*Garasol* an antibiotic (Gentamicin sulfate) dissolved in water to give a concentration of 1,000 ppm or a concentration as approved by the Department of Agriculture and Forestry.

*Laboratory* a certified laboratory as defined in R.S. 3:2358.3 and which employs at least one microbiologist.

*Pet Turtle* a turtle with a carapace length of less than 4 inches that originates from a Louisiana pet turtle farm operated by a licensed pet turtle farmer.

*Pet Turtle Farm* any area of land or water used to breed, raise or keep pet turtles.

*Quarantined Area* any designated area or premises where pet turtle eggs or hatchlings are stored, processed or hatched which has been designated as quarantined by a Louisiana licensed, accredited and department-approved veterinarian due to a finding of contamination in a group or lot by Salmonella, Arizona or other bacteria harmful to other turtles or humans.

*Turtle Lot* any amount of pet turtles or pet turtle eggs up to 20,000 in number. The term turtle lot may be used interchangeably with the term turtle group, group of turtles, or group of turtle eggs.

*Turtles* any animals commonly known as turtles, tortoises, terrapins and all other animals of the order Testudinata, class Reptilia except marine species (families Dermochelidae and Cheloniidae.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2358.2.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Animal Health Services, LR 12:224 (April 1986), repealed and repromulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 17:350 (April 1991), amended by the Office of the Commissioner, LR 26:

#### §2302. Facilities

A. Effective January 1, 2001, all applicants for initial licensure as licensed pet turtle farmers shall be required to meet, prior to licensure, all standards of construction and operations established by these rules and regulations.

B. All licensed pet turtle farmers that are licensed prior to January 1, 2001, shall be required to meet all standards of construction and operation established by these rules and regulations no later than January 1, 2002.

C. Each facility operated by a licensed pet turtle farmer shall be of sufficient size to contain no less than the following: turtle pond(s), turtle laying area, egg washing area, egg treatment area, hatching area, holding or post-hatching area, and inventory storage area.

D. Each facility shall possess hot and cold water, hand washing facilities, cooling and ventilation capability, be free of rodents and pests, be properly disinfected, utilize stainless steel or non-porous tables, buckets and baskets and have access to restroom facilities.

E. The physical structure shall consist of a free-standing building that is used only for the washing, treating, hatching, incubating, raising, shipping or holding of turtles or turtle eggs. Such building shall be separate and apart from the pond area and the egg laying area. No business activity other than the activities associated with the raising, treating, hatching, storing and marketing of turtles or turtle eggs shall be conducted within the confines of the building designated for turtle raising, treating, hatching, storing and marketing.

F. All floors in the washing or treating areas shall consist of concrete or non-porous covering with drainage sufficient to prevent the accumulation of water. All surfaces in the washing or treating areas which come in contact with turtles or turtle eggs shall be non-porous.

G. All washing areas and treating areas shall be well lighted and ventilated.

H. The hatching area shall be an identifiable room in which the temperature can be maintained and controlled.

I. The holding or post-hatching area shall be large enough to accommodate all designated groups of turtles that have not been sold. Lighting, ventilation and cooling shall be such so as to insure humane treatment of the turtles.

J. The turtle production area (ponds and laying areas) shall be free of debris, trash and offensive odors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2358.2.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Animal Health Services, LR 12:224 (April 1986), repealed and repromulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 17:350 (April 1991), amended by the Office of the Commissioner, LR 26:

### **§2303. Monitoring of Turtle Farms for Safety and Sanitization**

A. State-employed veterinarians shall inspect the premises of licensed pet turtle farmers, including those areas involved in the washing, incubation and hatching of turtles, or other operations. At least one inspection shall be performed prior to the start of each egg laying season. Recommendations shall be made to farmers to ensure compliance with these regulations. At the time of inspection, state-employed veterinarians or their designees may randomly select eggs or turtles for submission to a laboratory for microbiological examination. The inspections shall be made to insure the following.

1. The egg immersion method of egg collection and sanitization is being conducted properly and is in accordance with procedures issued by the department.

2. All equipment used in the egg immersion method shall be clean and in working order.

3. Vacuum tanks used for the egg immersion method shall be airtight and constructed of smooth-finished material to facilitate decontamination.

4. The egg immersion method shall be performed in a designated building. Due care shall be applied to maintaining isolation of this area. Operators shall prevent spillage or transfer of the antibiotic solution used in the egg immersion method to any other area or the environment outside of the building designated for the egg immersion method.

5. Persons implementing the egg immersion method shall wash their hands in disinfectant and remove the garments recommended in department-issued guidelines prior to leaving the isolated area where the method is being performed.

B. State-employed veterinarians shall inspect the premises of turtle farmers to insure that no turtles which have been treated by the egg immersion method or any other method utilizing antibiotics shall be introduced into the environment.

C. State-employed veterinarians or their designees shall inspect the premises of turtle farmers to insure that no turtles or eggs which have been treated by the egg immersion method or any other method utilizing antibiotics are used to stock or restock the ponds of a licensed pet turtle farmer or non-licensed pet turtle farmers.

D. State-employed veterinarians or their designees shall inspect the premises of turtle farmers to insure that no turtles or eggs belonging to different groups are commingled without first receiving health certificates.

E. State-employed veterinarians or their designees shall inspect the premises of turtle farmers to insure that each turtle group is clearly identified and is not improperly commingled with saleable or hatchable eggs of other groups.

F. State-employed veterinarians or their designees shall inspect the records of licensed pet turtle farmers to verify that all documentation required by the department shall be kept current.

G. Samples of water from ponds may be taken by state-employed veterinarians or their designees and shall be transmitted to a laboratory for chemical and microbiological analysis, including, but not limited to pH, antibiotic and pesticide contaminants, and potentially pathogenic bacteria.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2358.2.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Animal Health Services, LR 12:224 (April 1986), repealed and repromulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 17:350 (April 1991), amended by the Office of the Commissioner, LR 26:

### **§2305. Collection of Egg and Turtle Samples**

In order to ensure a representative sample from the turtle group and to prevent cross-contamination, the following procedures shall be followed.

1. Licensed pet turtle farmers shall inform the department in a timely manner of their intention to ship turtle hatchlings or eggs to arrange certification procedures.

2. Upon notification by the farmer, a department-employed veterinarian or designee shall inspect the group of turtles or turtle eggs bound for shipment and randomly select

turtles or eggs for submission to a certified laboratory for microbiological examination.

3. The department-employed veterinarian shall inspect the premises and turtle group or eggs and shall issue a certificate of inspection subject to compliance with the requirements of these regulations. The certificate of inspection shall verify the species, number of turtles or eggs, destination, turtle group number and compliance with the egg immersion method.

4. All specimens shall be collected using approved methods to prevent contamination.

5. The transportation to department-approved laboratories for microbiological examination and handling of the samples of turtles and eggs shall be performed in such a manner as to maintain identity and integrity.

6. Licensed pet turtle farmers shall have the option of:

- collecting samples under the on-site supervision of the department-employed veterinarian or designee; or
- allowing the department veterinarian or designee to collect the samples.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2358.2.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Animal Health Services, LR 12:224 (April 1986), repealed and repromulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 17:350 (April 1991), amended the Office of the Commissioner, LR 26:

### **§2307. Movement of Pet Turtle Eggs and Pet Turtles**

The department shall regulate the movement of turtles or turtle eggs by licensed pet turtle farmers and procedures shall include, but not be limited to, shipment into local and international commerce, as well as shipment to certified laboratories.

1. All turtles or eggs leaving a licensed pet turtle farm bound for a certified laboratory shall be accompanied by a certificate of inspection. A health certificate from a Louisiana licensed veterinarian stating that the turtles and/or eggs originated from a Louisiana licensed pet turtle farm shall accompany all shipments into international commerce. Each health certificate shall identify the final destination of the turtles or eggs they accompany.

2. A health certificate or a laboratory report pursuant to a microbiological examination shall be required for any intrastate movement of pet turtles or pet turtle eggs except for submission to a Louisiana certified laboratory for microbiological examination.

3. Turtles shipped to certified laboratories for microbiological examination shall be accompanied by appropriate documentation.

4. No pet turtles or their eggs originating outside of Louisiana shall be sold, held for sale, or offered for any other type of commercial or public distribution in Louisiana.

5. No dead turtles or non-viable eggs shall be shipped, transported or distributed.

6. Turtles or turtle eggs shall be shipped, transported or distributed only in packaging approved by the department.

7. Turtles or eggs intended for international commerce shall be conspicuously marked "For Export Only" on the outside of the shipping package and shall be accompanied by a health certificate and a certified laboratory report.

8. Official health certificates and appropriate affidavits shall accompany movement of all pet turtles and

eggs shipped, transported or distributed for non-commercial purposes.

9. Pet turtle eggs that are offered for sale shall be washed and treated by the egg immersion method, possess a group designation number, be laboratory tested, and be declared salmonella-free, unless prior approval for sale has been granted by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2358.2.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Animal Health Services, LR 12:224 (April 1986), repealed and repromulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 17:350 (April 1991), amended by the Office of the Commissioner, LR 26:

### **§2309. Identification of Groups of Turtles and Turtle Eggs**

A. All groups of turtles or turtle eggs produced by licensed pet turtle farmers in Louisiana shall be assigned an identification number in a department-approved manner.

B. No turtle group shall exceed 20,000 viable hatchlings or eggs.

C. All pet turtle eggs shall originate from department licensed pet turtle farmers. They shall be continuously identifiable and properly labeled.

D. All pet turtles, treated by the egg immersion method, on turtle farms operated by licensed pet turtle farmers, shall be placed in a designated lot and remain a component of the same lot until they are sold or destroyed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2358.2.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Animal Health Services, LR 12:224 (April 1986), repealed and repromulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 17:350 (April 1991), amended by the Office of the Commissioner, LR 26:

### **§2311. Microbiological Test Procedures**

A. Samples of turtles or turtle eggs shall be subjected to microbiological examination using approved procedures and techniques based upon procedures set forth in *Official Methods of Analysis of the Association of Official Analytical Chemists*.

B. Turtle groups identified as contaminated with bacteria of the genus *Salmonella* or *Arizona* or any other microorganisms pathogenic to humans, domestic animals or aquatic species shall be subject to the notification provisions of R.S. 3:2358.11 and this Part.

C. All groups of turtles or groups of turtle eggs that are found to be positive for *Salmonella spp.* shall be quarantined and disposed of as provided by law and these regulations. Provided, however, the owner of each group of turtles or group of turtle eggs that test positive for *Salmonella spp.* may, within the time prescribed by law for disposal of such pet turtles, subdivide the affected positive group into a maximum of four equal subgroups. Each such subgroup shall be separately identified, simultaneously randomly sampled and tested by an approved diagnostic laboratory in accordance with normal protocol. The laboratory results of each subgroup of the previously test positive group shall be final. No further testing shall be allowed. Any subgroup which tests positive for *Salmonella spp.* shall be disposed of in accordance with the law and these regulations.

D. All pet turtles that are on turtle farms operated by licensed pet turtle farmers shall originate from eggs that are produced on turtle farms operated by licensed pet turtle farmers and have been subjected to the egg immersion method treatments, random sampling and tested by an approved diagnostic laboratory.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2358.2.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Animal Health Services, LR 12:224 (April 1986), repealed and repromulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 17:350 (April 1991), amended by the Office of the Commissioner, LR 26:

### **§2313. Issuance of Health Certificates**

A. Accredited Louisiana licensed and department-approved veterinarians will issue official health certificates.

B. Health certificates shall not be issued on groups of turtles or eggs until they have been inspected by a department-approved veterinarian and shall state that the veterinarian has found them to be free of visible signs of infectious, contagious or communicable diseases, and a certified laboratory has found them to be free of bacteria pathogenic to humans, domestic animals and aquatic species.

C. Official Louisiana health certificates shall be issued only on turtles or turtle eggs produced by Louisiana licensed pet turtle farmers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2358.2.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Animal Health Services, LR 12:224 (April 1986), repealed and repromulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 17:350 (April 1991), amended by the Office of the Commissioner, LR 26:

### **§2315. Quarantine**

In addition to the procedures set forth in R.S. 3:2358.11, upon the identification by laboratory examinations of salmonella or any other species of bacteria harmful to humans or other pet turtles in a group of turtles or turtle eggs, the following procedures for quarantine shall apply.

1. Notification of the test results and quarantine shall be made in person or by telephone, followed by written notification as set forth in R.S. 3:2358.11, by agents of the department, including at least one department veterinarian.

2. The quarantine and its related restrictions shall remain in effect until the farmer is otherwise notified by the department.

3. Immediately upon receipt of the personal notification, the licensed pet turtle farmer producing the quarantined eggs shall identify to the agents of the department all turtles or eggs belonging to the same group as the one which tested positive for the presence of salmonella or other harmful bacteria.

4. Licensed pet turtle farmers wishing to submit a quarantined turtle group for a second laboratory microbiological examination must do so prior to the end of the 21-day period specified in R.S. 3:2358.12, and must follow the same procedure established for an initial collection and submission of samples. Failure to timely obtain a second examination shall result in the implementation of the disposal procedures set forth in R.S. 3:2358.12.

5. Quarantined eggs or turtles shall be subject to inventory and verification by agents of the department. records, physical examination and photographs may be used to verify the inventory of quarantined eggs or turtles.

6. Quarantined turtles and eggs shall be sealed under supervision of agents of the department to prevent the spread of pathogenic bacteria until the licensed pet turtle farmer receives notice of either:

a. the lifting of the quarantine; or

b. instructions dealing with the disposal of the contaminated turtle or egg group.

7. All turtles and/or eggs belonging to a group which has either received a second notice of contamination with harmful bacteria or otherwise ordered disposed of by the department shall be disposed of in a humane manner approved by the department within 21 days of the receipt of the second notice.

8. Areas where quarantined turtles or eggs have been kept shall be disinfected in a manner approved by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2358.2.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Animal Health Services, LR 12:224 (April 1986), repealed and repromulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 17:350 (April 1991), amended by the Office of the Commissioner, LR 26:

### **§2317. Form and Content of Records**

A. In addition to those records required under R.S. 3:2358.7, licensed pet turtle farmers, exporters of pet turtles or eggs, certified laboratories and department-approved veterinarians shall be responsible for maintaining and submitting as requested proper records. Records shall include, but not be limited to, purchase and disposal of antibiotics, application of the egg immersion method, volume of eggs treated, laboratory reports and disposition of groups of eggs and turtles. These records must be current.

B. All turtles or turtle eggs that are offered for sale or sold by licensed pet turtle farmers-exporters shall be accompanied by a current chain of custody document, laboratory report and health certificate.

C. Each licensed pet turtle farmer, farmer-exporter or exporter shall be required to initiate and maintain accurate, current documentation on the origin and distribution of all groups of turtles or groups of turtle eggs.

D. The records shall be maintained in a manner that allows for an orderly inspection. The records shall include the following documents:

1. official certificate of inspection for pet turtles and eggs;

2. pet turtle group distribution document;

3. facility inspection reports (surveillance and monitoring);

4. health certificates;

5. laboratory reports;

6. U.S. Fish and Wildlife Service Form 3-177 (for exporters only);

7. turtle replenishing reports;

8. citations.

E. All documents are required to be maintained for a period of three years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2358.2.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Animal Health Services, LR 12:224 (April 1986), repealed and repromulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 17:350 (April 1991), amended by the Office of the Commissioner, LR 26:

### **§2319. Pet Turtle Farmers; Licensing**

In addition to the provisions below, the requirements for licensure set forth in R.S. 2358.5 shall apply.

1. Licenses for pet turtle farming shall be issued only by the Office of Animal Health Services of the Louisiana Department of Agriculture and Forestry.

2. Upon issuance of an initial license by the department, licensed pet turtle farmers shall be assigned a permanent licensed farmer identification code for use on all documents related to pet turtle farming.

3. Prior to the issuance or renewal of a pet turtle farmer license, an inspection of the farm premises shall be made by an accredited, Louisiana licensed and department approved veterinarian to ensure that all equipment required for sanitization and other procedures is present and in working order.

4. A map or schematic showing the locations of ponds or other breeding habitats, storage, treatment and incubation buildings and facilities shall be included with all applications for a pet turtle farmer license. Each pond or breeding habitat shall be designated by a letter, beginning with "A", and shall be designated in sequential order and properly labeled on the map or schematic.

5. Licenses for turtle farming shall be issued upon the satisfactory completion and acceptance by the department of the application form to be a licensed pet turtle farmer, accompanied by an application fee of \$250 by the person seeking such a license. The application form should specify the following, along with any other information required by the Commissioner of Agriculture and Forestry:

- a. name of applicant;
- b. date of application;
- c. address of applicant;
- d. telephone number of applicant;
- e. whether the applicant is an individual, corporation, subchapter "S" corporation, cooperative or partnership;
- f. principal officers of the applicant, if any;
- g. location of applicant's principal office and farming premises;
- h. location of all offices operated by applicant, along with the name of the manager and phone number of each;
- i. the dates upon which the applicant begins and ends his fiscal year;
- j. the names, businesses and phone numbers of three persons who can provide references as to the character and business standing of the applicant.;
- k. the following phrase shall be included at the bottom of the application, which must be read by the applicant and which must be signed and dated by the applicant to signify his assent thereto:

The undersigned having read Part X of Chapter 16 of Title 3 of the Louisiana Revised Statutes of 1950, Act 770 of 1990 and the rules and regulations written in conformity therewith, and agreeing to abide by and comply therewith, applies for a

license to operate as a licensed pet turtle farmer under the provisions of the aforementioned Acts of the Legislature, in furtherance whereof, the statements and answers of the above questions, are made and declared to be true under penalty of perjury.

6. In the case of the transfer of ownership of the person or entity that is the licensed pet turtle farmer, that farmer must reapply with the department for licensing and must meet all of the qualifications required for the issuance of an initial license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2358.2.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Animal Health Services, LR 12:224 (April 1986), repealed and repromulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 17:350 (April 1991), amended by the Office of the Commissioner, LR 26:

### **§2321. Proper Disposal**

A. Because of the danger posed by the emergence of bacteria resistant to antibiotics used to kill salmonella and other harmful bacteria, licensed pet turtle farmers shall follow approved disposal procedures, including but not limited to the following.

1. Eggs or turtles that have been found to contain Salmonella, Arizona or other harmful bacteria shall be disposed of in a humane manner approved by the department.

2. Chlorine or antibiotic solutions shall be disposed of in a manner approved by the department.

B. Dead or deformed turtles and also those turtles not sold within 12 months of certification shall be disposed of in a humane manner as approved by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2358.2.

HISTORICAL: Promulgated by the Department of Agriculture, Office of Animal Health Services, LR 12:224 (April 1986), repealed and repromulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 17:350 (April 1991), amended by the Office of the Commissioner, LR 26:

### **§2323. Authority of Agents to Enter Premises**

A. Agents of the department are authorized and shall be allowed entry onto any property or premises in the state of Louisiana for the purpose of carrying out the provisions of these regulations. Whenever reasonably possible, agents shall notify the turtle farmer before performing any inspections.

B. Agents of the department are authorized to inspect all records and premises maintained by licensed pet turtle farmers in order to enforce the provisions of R.S. 3:2358.1 et seq. and these regulations.

C. No person shall in any way interfere with an agent in making inspections on properties or premises in carrying out the provisions of these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2358.2.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Animal Health Services, LR 12:224 (April 1986), repealed and repromulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 17:350 (April 1991), amended by the Office of the Commissioner, LR 26:

### **§2325. Department-issued Guidelines**

Due to the unique nature and rapid development of this evolving program, the department finds it necessary to issue

guidelines to delineate certain detailed procedures which require periodic updates. These guidelines will be made available upon request or application for licensure as a licensed pet turtle farmer. Prior to any changes in these guidelines, except for emergencies, interested persons will be given a reasonable amount of time for comment and appeal. Licensed pet turtle farmers will be sent copies of these proposed changes by U.S. mail.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 3:2358.2.

**HISTORICAL NOTE:** Promulgated by the Department of Agriculture, Office of Animal Health Services, LR 12:224 (April 1986), repealed and repromulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 17:350 (April 1991), amended by the Office of the Commissioner, LR 26:

### **§2327. Violations and Penalties**

A. For failure to implement the egg immersion method or Siebeling method of treatment in conducting his business, the offender shall be fined no more than \$1,000 and shall be further enjoined from operation of such business, and no further sales shall be allowed, until this method is implemented. No fine shall be assessed for non-willful deviation from the application of the regulations and guidelines, but the licensed pet turtle farm shall be enjoined, and no further sales shall be allowed, until deficiencies are adequately corrected.

B. It shall be a violation of these regulations for anyone to engage in the falsification or misrepresentation of groups of turtles or groups of turtle eggs for sampling, testing or retesting.

C. It shall be a violation of these regulations for anyone to alter or falsify or to provide documents for alteration or falsification of groups of turtles or groups of turtle eggs.

D. Unless otherwise provided, it shall be a violation of these regulations for any person to sell, transmit or have transmitted groups of turtles or groups of turtle eggs to any other person except a licensed and bonded freight forwarder, exporter, or approved research institution.

E. Any person found guilty of violating any of the provisions of this Chapter or those of R.S. 3:2358.1 et seq., is subject to the penalties provided by R.S. 3:2358.14, including fines of up to \$1,000 for each violation. Each day in which a violation occurs shall be considered a separate offense.

F. Prior to the assessment of any civil penalties, there shall be an adjudicatory hearing in accordance with the Administrative Procedure Act.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 3:2358.2.

**HISTORICAL NOTE:** Promulgated by the Department of Agriculture, Office of Animal Health Services, LR 12:224 (April 1986), repealed and repromulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 17:350 (April 1991), amended by the Office of the Commissioner, LR 26:

### **§2329. Repeal of Prior Rules and Regulations**

All prior rules and regulations in this chapter adopted and/or promulgated in accordance with R.S. 56:638 are hereby repealed in their entirety.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 3:2358.2.

**HISTORICAL NOTE:** Promulgated by the Department of Agriculture, Office of Animal Health Services, LR 12:224 (April

1986), repealed and repromulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 17:350 (April 1991), amended by the Office of the Commissioner, LR 26:

A public hearing will be held on these rules on May 26, 2000 at 9:30 a.m. at 5825 Florida Blvd., Baton Rouge, LA 70806 and any written comments are to be received by the close of business on June 2, 2000 at the above stated address. All interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing, at the hearing.

### **Family Impact Statement**

The proposed amendments to rule 7:XXI.Chapter 23 regarding the requirements for the operation and licensing for the farming and selling of Louisiana pet turtles should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically there should be no known or foreseeable effect on:

- (1) the stability of the family;
- (2) the authority and rights of parents regarding the education and supervision of their children;
- (3) the functioning of the family;
- (4) family earnings and family budget;
- (5) the behavior and personal responsibility of children;
- (6) the ability of the family or a local government to perform the function as contained in the proposed rule.

Bob Odom  
Commissioner

## **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Pet Turtles**

### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There will be no implementation costs or savings to local or state governmental units. The purpose of these proposed rule changes is to conform to FDA requirements which might assist pet turtle farmers in having the FDA ban on the sale of pet turtles in Louisiana lifted or modified.

### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is anticipated that 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 except for those pet turtle farmers that may have to upgrade their facilities to meet licensing requirements. These proposed rule changes may require some pet turtle farmers to upgrade their facility in terms of sanitation and separation of breeding areas from handling areas as well as providing some changes in testing requirements to control salmonella spp. The cost to upgrade those facilities in which pet turtle farmers are currently in business may be between \$3,000 and \$5,000. Currently, there are 56 pet turtle farmers, of which approximately 25 percent, or 14, own facilities that will have to be upgraded at an aggregate cost between \$42,000 and \$70,000.

If groups of turtles or groups of turtle eggs are found to be positive for salmonella spp., farmers are required to quarantine

and destroy all those contaminated. This will result in loss of income to pet turtle farmers. However, if the FDA ban on the sale of pet turtles is lifted, additional revenue will be generated for pet turtle farmers. Currently, such farmers can only sell pet turtles in foreign markets. Sales could double if pet turtle farmers are allowed to sell in the U.S.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

Skip Rhorer  
Assistant Commissioner  
0004#043

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Civil Service  
Board of Ethics**

**Contribution Limit  
(LAC 52:I.1609)**

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Department of Civil Service, Louisiana Board of Ethics, has initiated rulemaking procedures to promulgate a rule to the Rules for the Board of Ethics concerning the aggregate political committee contribution limit for district level candidates pursuant to its authority in Section 1134.A of the Code of Governmental Ethics (R.S. 42:1134.A).

**Title 52  
ETHICS**

**Part I. Board of Ethics**

**Chapter 16. The Board as Supervisory Committee of  
the Louisiana Campaign Finance  
Disclosure Act**

**§1609. Contribution Limit**

For the period January 1, 2000 to December 31, 2003, the total amount of combined contributions for both the primary and general elections, from political committees, which may be accepted by a district office candidate shall not exceed \$49,255.

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

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 26:

No preamble to the proposed rule has been prepared. Interested persons may direct their comments to R. Gray Sexton, Board of Ethics, 8401 United Plaza Boulevard, Suite 200, Baton Rouge, LA 70809-7017, telephone (225) 922-1400 or (800) 842-6630, until May 10, 2000.

If necessary, a public hearing will be held by the Board of Ethics at 8401 United Plaza Boulevard, Baton Rouge, Louisiana, 70809-7017 between May 25, 2000 and May 30, 2000.

R. Gray Sexton  
Ethics Administrator

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Contribution Limit**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Implementation of the proposed rule will increase expenditures by \$80 for publishing the rule in the *Louisiana Register*. The costs will be absorbed in the board's existing budget.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The rule is not expected to have any significant impact on revenue collections of state and local governmental units. There is no way to determine how many district level candidates, or their campaign committees, will violate R.S. 18:1505.2H(7)(a)(ii) by receiving contributions in excess of \$49,255 from political committees. However, R.S. 18:1505.2J(1) provides that those that violate the above-mentioned provision shall be subject to a penalty of not more than \$5,000 or the amount of the violation, whichever is greater, except that the penalty for a knowing and willful violation shall not be more than \$10,000 or 200% of the amount of the violation, whichever is greater.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The rule will permit district office candidates to receive an additional \$1,060 in the aggregate amount from political committees for a primary and general election cycle during the period of January 1, 2000 to December 31, 2003.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition or employment.

Maris L. McCrory  
Deputy General Counsel  
0004#094

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

**Bulletin 741C School Performance Scores (LAC 28:I.901)**

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement an amendment to Bulletin 741, referenced in LAC 28:I.901.A, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November 1975). The proposed changes more clearly explain and refine existing policy as it pertains to the process for computing School Performance Scores during the first accountability cycle and subsequent cycles.

**Title 28  
EDUCATION**

**Part I. Board of Elementary and Secondary Education  
Chapter 9. Bulletins, Regulations, and State Plans  
Subchapter A. Bulletins and Regulations  
§901. School Approval Standards and Regulations**

**A. Bulletin 741**

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A) (10), (11), (15); R.S. 17:7 (5), (7), (11); R.S. 17:10, 11; R.S. 17:22 (2).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 1:483 (November 1975), amended by the Board of Elementary and Secondary Education LR 25:1084 (June 1999), LR 26:

**Bulletin 741**

**Louisiana Handbook for School Administrators  
School Performance Scores**

**2.006.03** A School Performance Score (SPS) shall be calculated for each school. This score shall range from 0-100 and beyond, with a score of 100 indicating a school has reached the 10-Year Goal and a score of 150 indicating a school has reached the 20-Year Goal. The lowest score that a given school can receive for each individual indicator index and/or for the SPS as a whole is "0."

For the first accountability cycle, the baseline SPS shall be calculated using CRT and NRT scores from spring 1999 and the prior year's attendance and dropout data. The comparison SPS shall be calculated using CRT and NRT scores from spring 2001 and the prior year's attendance and dropout data. Beginning the second cycle, every year of student data shall be used as part of a school's SPS. Calculations of the SPS shall use the following:

- a. an average of the most recent two years' test data; and
- b. attendance and dropout rates from the two years prior to the last year of test data used.

For schools entering accountability after 1999, one year's data shall be used for schools formed in mid-cycle years and two years' data for other schools.

Interested persons may submit written comments until 4:30 p.m., June 9, 2000, 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 School Performance Scores**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There are no estimated implementation costs to state governmental units. The proposed changes refine and clarify the existing accountability policy by more clearly explaining School Performance Score calculations.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There will be no effect on revenue collections by state/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 Langley  
Deputy Superintendent  
0004#065

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Bulletin 1566 Guidelines for Pupil Progression  
(LAC 28:XXXIX.503)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the State Board of Elementary and Secondary Education approved for advertisement an amendment to Bulletin 1566, Guidelines for Pupil Progression, referenced in LAC 28:I.907.A. The proposed revision gives 8th grade students the ability to earn a maximum of one Carnegie unit of credit toward graduation for remedial courses. Prior to this revision, these 8th grade students were required to take non-credit remedial courses in the areas in which they scored at the "Unsatisfactory" achievement level on LEAP 21.

**Title 28  
EDUCATION**

**Part XXXIX. Bulletin 1566 Guidelines for Pupil Progression**

**§503. Regular Placement**

A.1.a.-A.1.b.vi. ...

vii. Eighth grade students who are 16 years of age on or before September 30 must enroll in an alternative program or setting, Option 2 or Option 3.

(a). Option 2 placement in a transitional program at the traditional high school campus where students may receive a maximum of one Carnegie unit of elective credit for remedial courses in English language arts and/or mathematics and may take credit courses in other subjects. Students may remain in Option 2 for a maximum of two years and will participate in the Grade 8 LEAP 21.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2169 (November 1999), amended LR 26:

Interested persons may submit written comments until 4:30 p.m., June 9, 2000 to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody  
Executive Director

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: ~~Bulletin 1566~~ Guidelines for Pupil Progression

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There will be no increase in cost to state or local governmental units to implement this policy change. School systems will use existing personnel to teach any remedial courses.

#### 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)

Benefits to schools and students include better accountability and increased student achievement.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There should be no impact on competition and employment. Teachers currently employed will teach any new remedial courses.

Marlyn Langley  
Deputy Superintendent  
0004#063

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Board of Elementary and Secondary Education

Bulletin 1706~~6~~ Regulations for Implementation of  
the Children with Exceptionalities Act  
(LAC 28: XLIII.Chapters 11-20)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to Bulletin 1706, the Regulations for Implementation of the Children with Exceptionalities Act (R.S. 1941 et seq.). The present revision is being published in codified form, hence historical notes will reflect a history, by section, from this time forward.

The proposed revisions to Bulletin 1706, The Regulations for Implementation of the Children with Exceptionalities Act, R.S. 17:1941 et seq. officially changes the state regulations to be in compliance with the recent revisions to the federal regulations of IDEA-Part B and in the state statute at R.S. 17:1941 et seq. The gifted/talented regulations are not federally mandated and the IDEA regulations are not applicable to Gifted/Talented students. Since service to students who are gifted/talented are required under state

statute, a companion document had to be created to address this population.

## Title 28 EDUCATION

### Part XLIII. ~~Bulletin 1706~~ Regulations for Implementation of the Children with Exceptionalities Act

#### Subpart B. Regulations for Gifted/Talented Students

(Editor's Note: Bulletin 1706 was adopted by the Board of Elementary and Secondary Education in LR 4:337 (September 1978) in an uncodified format, amended LR 7:407, 484, 625 (August, October, December 1981); LR 8:63, 323 (February, July 1982); LR 9:130, 549, 835, 836 (March, August, December 1983); LR 10:7 (January 1984); LR 11:252 (March 1985); LR 12:763 (November 1986); LR 14:11, 609 (January, September 1988); amended LR 16:297, 496 (April, June 1990); LR 17:956, 957 (October 1991); LR 18:310 1148 (April, November 1992); LR 19:171, 1131, 1416 (February, September, November 1993); LR 20:161 (February 1994); LR 21:550 (June 1995); LR 22:190 (March 1996); LR 24:283 (February 1998). This present revision is being published in codified form, hence historical notes will reflect a history by section from this time forward.)

#### Chapter 11. Responsibilities of the Board of Elementary and Secondary Education

##### §1101. Free Appropriate Public Education

A. The Louisiana State Board of Elementary and Secondary Education (the State Board) shall be responsible for the assurance of a free appropriate public education to all G/T students ages three through twenty-one years; and shall exercise supervision and control of public elementary and secondary education.

B. The State Board shall be directly responsible for the provision of a free appropriate public education to G/T students, ages three through twenty-one years, who are within the jurisdiction of either Special School District Number or in the State Board Special Schools (Louisiana School for Visually Impaired, Louisiana School for the Deaf, or Louisiana Special Education Center).

C. The State ensures the use of whatever State, local, Federal, and private sources of support are available in the state to meet the requirements of these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

##### §1102. Issuance of Regulations

The State Board shall adopt, amend, or repeal rules, regulations, standards, and policies necessary or proper for the provision of a free appropriate public education developed pursuant to R.S. 17:1942.1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

##### §1103. Compliance with Federal Rules

A. The State Board has the responsibility of complying with rules and regulations governing grants for educational purposes from the Federal government or from any other person or agency, which are not in contravention to the Constitution and laws, and the authority to take all action necessary to achieve compliance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

## **Chapter 12. Responsibilities of the Superintendent of Public Elementary and Secondary Education and the Department of Education**

### **§1201. General Responsibilities and Authorities**

A. The State Superintendent of Public Elementary and Secondary Education (the Superintendent) and the State Department of Education (the Department) shall administer those programs and policies necessary to implement R.S. 17:1941 et seq. Responsibilities of the State Superintendent and the Department are listed below.

1. The Department shall approve, in accordance with standards approved by the State Board, each public school program that delivers special education.

2. The Department shall recommend to the State Board, in accordance with standards approved by the State Board, each participating private school program that delivers special education.

3. The Department shall receive, administer, and direct the distribution of Federal funds for the education of G/T students, except those received directly by LEAs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§1205. Preparation of Annual Budget**

The Department shall prepare and submit to the State Board for review and approval for the next fiscal year a comprehensive budget that at a minimum proposes the appropriations by the Louisiana Legislature of whatever State funds are needed by the Department, Special School Districts, and city/parish LEAs to comply fully with all of the requirements established by R.S. 17:1941 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§1220. Personnel Standards**

The Department shall develop as needed, Louisiana standards for all personnel who provide special education, administrative, ancillary, pupil appraisal and related services to G/T students (three through age twenty-one).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§1230. Review of Enforcement Recommendations**

The State Superintendent, after review of the recommendations from the Division of Special Populations, shall submit to the State Board at its next regularly scheduled meeting all recommendations of the Department to withhold State or Federal funds for special education or to take other necessary enforcement action in accordance with the procedures described in the Louisiana Administrative Code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§1240. Impartial Hearing Officers**

The Department and each LEA shall maintain a list of qualified and impartial hearing officers. The list will include

a statement of the qualifications of each of those persons and, to the extent possible, include representation from all regions of the state. The Department shall ensure that these hearing officers have successfully completed an inservice training program approved by the Department and have met all other criteria established by the Department. The Department shall provide additional inservice training whenever warranted by changes in applicable legal standards or educational practices.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§1251. Relationship between Special Education and Competency-Based Education**

No provision of the Louisiana competency-based education program shall be construed to interfere with the provision of a free appropriate public education (FAPE) to G/T students.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§1252. Louisiana Educational Assessment Program**

G/T students shall be included in the Louisiana Educational Assessment Program with appropriate accommodations and modifications in administration, if necessary, as documented in the student's IEP.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§1261. Program Options**

The Department shall ensure that each LEA shall take steps to ensure that its G/T students residing in the area served by the LEA have available to them the variety of educational programs and services available to all students in the area served by the agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§1270. Interagency Agreements and Methods for Ensuring Services**

A. The Department is authorized to enter into any agreement developed with another public or private agency, or agencies, which is in accordance with prescribed guidelines.

1. The agreement shall be consistent with Chapter 18 of *Bulletin 1706 Subpart B* of these regulations.

2. The agreement shall be essential to the achievement of full compliance with these Regulations.

3. The agreement shall be designed to achieve or accelerate the achievement of the full educational goals for all G/T students.

B. The Department through the Governor shall ensure that an interagency agreement or other mechanism is in effect between each noneducational public agency to ensure that FAPE is provided, including the provision of these services during the pendency of disputes. The agreement must include the following:

1. an identification of or a method for defining the financial responsibility of each agency for providing services;

2. conditions and terms of reimbursement which an LEA must be reimbursed by other agencies;

3. procedures for resolving interagency disputes (including procedures under which LEAs may initiate proceedings); and

4. policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services.

C. The requirements of this section may be met through only the legal documents that are listed below:

1. state statute or regulation;

2. signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services;

3. other appropriate written methods as determined by the Governor or designee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§1271. Nondiscrimination**

The Department shall comply with all statutes and regulations prohibiting discrimination on the basis of race, color, national origin, sex, disability and age.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

## **Chapter 13. Responsibilities and Activities of the Division of Special Populations**

### **§1301. General Supervision**

A. The Division of Special Populations is established within the Department to provide general supervision of all education programs for G/T students within the State. *General Supervision* is defined as the responsibility to perform functions prescribed by the State Board.

1. The Division shall ensure that any State standards affecting other State agencies and established under the general supervision requirement shall be developed in cooperation with such agencies.

2. The Division shall disseminate such standards and revisions to all public agencies bound by them and provide parents and all citizens with information requested regarding implementation of such State standards.

3. The Division shall provide technical assistance to all public agencies bound by such standards in their proper implementation.

4. The Division shall monitor according to written procedures the implementation of State standards in each public agency. Such monitoring shall include child identification and programmatic, administrative, and fiscal issues.

5. The Division shall institute a system for complaint management and investigation regarding the implementation of State standards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§1302. Monitoring, Complaint Management and Investigation**

A. The Division is authorized to establish a system of monitoring, complaint management and investigatory provisions of these regulations.

B. The Division shall monitor, in accordance with the procedures established in the *Compliance Monitoring Procedures Handbook*, all public and other education agencies for compliance with these and other applicable Federal regulations, State statutes and standards.

C. The Division shall receive and review complaints concerning suspected noncompliance of regulations concerning the education of G/T students. It shall conduct this requirement through prescribed procedures.

1. The Division shall investigate allegations of failure to comply with any provision of these regulations and other applicable State or Federal laws, regulations or State standards.

2. The Division shall conduct hearings in accordance with the provisions of the *Louisiana Administrative Code*.

3. The Division, in carrying out its investigatory responsibilities, may require LEAs to keep certain records and to submit to the Division complete and accurate reports at such time and in such form and containing such information as are determined necessary to enable the Division to fulfill its responsibilities for ensuring compliance.

### **§1330. State Policies and Procedures: Notice and Participation**

Upon approval, the Division shall distribute to interested parties and shall post the final policies and procedures on the Department's official Internet Website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§1355. Confidentiality of Records**

The Division shall comply with all of the requirements of §517 pertaining to confidentiality of personally identifiable information contained in educational records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§1356. Notification of Child Identification Effort**

Notice of the child identification effort regularly undertaken by the Department and LEAs must be published or announced in newspapers or other media with circulation adequate to notify parents throughout the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§1369. Personnel Standards**

A. Personnel of State and local public and private educational agencies, including local agency providers, that deliver special education services (including instructional, appraisal, related, administrative, and support services) to G/T children (3 through 21) shall meet appropriate entry level requirements that are based on the highest

requirements in Louisiana applicable to the profession or discipline in which the person is providing special education or related services.

1. *The highest requirements in Louisiana applicable to a specific profession or discipline* means the highest entry-level academic degree needed for any State-approved or recognized certification, licensing, registration, or other comparable requirements that apply to the profession or discipline. *Profession or discipline* means a specific occupational category that provides special education or related services to G/T students under these regulations, that has been established or designated by the State, and that has a required scope of responsibility and degree of supervision.

2. *State-approved or State-recognized certification, licensing, registration, or other comparable requirements* means the requirements that a State legislature either has enacted or has authorized a State agency to promulgate through rules to establish the entry-level standards for employment in a specific profession of discipline in the state.

B. The Department requires LEAs providing services to exceptional students to make an ongoing good faith effort to recruit and hire appropriately and adequately trained personnel to provide special education and related services. In geographic areas of the State where there is a shortage of personnel that meet these qualifications, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet established standards may be hired as entry level personnel, consistent with State law, but must attain appropriate certification credentials to meet the requirements in *Bulletin 746: The La. Standards of State Certification for School Personnel*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§1370. Comprehensive System of Personnel Development**

The Department shall develop and implement a comprehensive system of personnel development that meets the requirements of a State Improvement Plan designed to ensure an adequate supply of qualified special education, general education, and related services personnel, and early intervention service providers which meets the requirements of §371 and §372 below. The needs assessment for personnel development, under this section, will be updated (at least) every five years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§1371. Adequate Supply of Qualified Personnel**

The Department will analyze state and local needs for professional development for personnel to serve G/T students: the number of personnel providing special education and related services; relevant information on current and anticipated personnel vacancies and shortages (including the number of individuals with temporary certification); and the training or retraining necessary to eliminate the shortages based, to the maximum extent possible, on existing assessments of personnel needs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§1372. Improvement Strategies**

A. The Department will describe the strategies the State will use to address the needs identified. The strategies will include how the State will address the identified needs for in-service and pre-service preparation to ensure that all personnel who work with G/T students (including professional personnel who provide special education, general education, related services, or early intervention services) have the skills and knowledge necessary to meet the needs of G/T students. The plan will include a description of how the Department will accomplish the following:

1. The Department shall prepare general and special education personnel with the content knowledge and collaborative skills needed to meet the needs of G/T students including how the State will work with other states on common certification criteria.

2. The Department shall work with institutions of higher education and other entities that (on both a pre-service and an in-service basis) prepare personnel who work with G/T students to ensure that those institutions and entities develop the capacity to support quality professional development programs that meet State and local needs.

3. The Department shall develop collaborative agreements with other States for the joint support and development of programs to prepare personnel for which there is not sufficient demand within a single state to justify support or development of such a program of preparation.

4. The Department shall work in collaboration with other States, particularly the Departments of Education of neighboring, states, to address the lack of uniformity and reciprocity in the credentialing of teachers and other personnel.

5. The Department shall acquire and disseminate to teachers, administrators, school board members, and related services personnel, significant knowledge derived from educational research and other sources, concerning how the State will, if appropriate, adopt promising practices, materials, and technology.

6. The Department shall encourage LEAs to recruit, prepare, and retain qualified personnel, including personnel with disabilities and personnel from groups that are under represented in the fields of regular education, special education, and related services.

7. The Department shall develop a plan that is integrated, to the maximum extent possible, with other professional development plans and activities, including plans and activities developed and carried out under other Federal and State laws that address personnel recruitment and training.

8. The Department shall provide for the joint training of parents and special education, related services, and general education personnel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§1373. Administration of Funds**

A. The Division, in concert with other Divisions within the Department, shall ensure the proper receipt and disbursement of all State and Federal funds administered by the Department specifically for the provision of special education and related services for G/T students.

B. Fiscal review and compliance monitoring will be conducted in accordance with the *Compliance Monitoring Procedures Handbook* and in accordance with auditing procedures established by the Department.

C. The monitoring of disproportionality shall be responsibility of the Department.

1. The Division shall collect and analyze data to determine whether significant disproportionality based on race, color, national origin, or gender is occurring in the state with respect to G/T students and in the placement in particular educational settings of these students.

2. If a significant disproportionality is determined, the Division shall provide for the review and, if necessary, revision of its policies, procedures and practices or shall require the affected LEA to revise its policies, procedures and practices to ensure it complies with these Regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§1374. Nonbias of Testing and Evaluation Materials**

The Division shall, with the approval of the SBESE, establish procedures as found in §434 to ensure that testing and evaluation materials used for evaluation and placement are free of racial, cultural, and/or gender bias.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

## **Chapter 14. Responsibilities of Local Educational Agencies**

### **§1401. Responsibilities of LEAs**

A. Each LEA shall identify, locate, and evaluate each student suspected of being gifted/talented, three through twenty-one years of age, residing within its jurisdiction.

B. Each LEA is responsible for providing or causing to be provided a free appropriate public education to each eligible G/T student, three through twenty-one years of age, who resides within its jurisdiction, except those students enrolled by their parents in a private school program

C. *Free appropriate public education* means special education and related services that are provided at public expense, under public supervision and direction and without charge; that meet SBESE standards, including these Regulations and all applicable bulletins approved by the SBESE (i.e., *Bulletin 741*, *Bulletin 746*, *Bulletin 1508*); that include preschool, elementary school, or secondary school education in the State; and that are provided in conformity with an individualized education program (IEP) that meets the requirements at §440-445.

1. Whatever State, local, Federal, and private sources of support are available may be used to provide a free appropriate public education, including the use of joint agreements between agencies for sharing the costs of those services.

2. Consistent with §440 and §443 of these Regulations, the LEA shall implement a student's IEP with

no delay including any case in which the payment source for providing or paying for special education and related services to the student has yet to be determined.

D. *Jurisdiction* is the right of a LEA to exercise authority over all students residing within its geographic area and over each student placed by the LEA in an educational program within the geographic area of another LEA or in an approved educational program out of the state.

1. For city/parish school systems, the geographic area is the boundary of the school board as defined in the Louisiana Revised Statutes.

2. For SSD#1, the geographic area is the boundary of the State-operated treatment and care residential facilities.

3. For a State Board Special School, the geographic area is the boundary of the educational facility.

4. For a charter school that is considered an LEA, the geographic area is the boundary of the educational facility.

5. If there is a transfer of jurisdiction from one system to another for the provision of a free appropriate public education initiated by an LEA, this action is indicated by using the word *referral*. According to these Regulations, such a referral culminates in the establishment of responsibility for a FAPE for the student by the receiving LEA. All transfers of jurisdiction are considered significant changes in placement.

E. Students who are eligible to receive a free appropriate public education are described below.

1. Free appropriate public education must be available to all G/T students reaching the age of three years.

2. A G/T student shall remain eligible for services until reaching age the of 22 unless the student exits the school system with a high school diploma.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§1403. G/T Students in Public Charter Schools.**

A. G/T students who attend public charter schools and their parents retain all rights under these Regulations.

B. If the public charter school is an LEA that receives funding under the MFP, the Department is responsible for ensuring that the requirements of these regulations are met through assigning initial responsibility for ensuring the requirements of these regulations are met to another entity; however, the Department shall maintain the ultimate responsibility for ensuring compliance with these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§1411. Child Search (Child Find) Activities**

A. Each LEA, in accordance with the requirements of this subpart, shall document that the effort of ongoing identification activities is conducted to identify and locate each student who is under its jurisdiction, who is suspected of being gifted/talented and in need of special education and related services, and who is one of the following:

1. enrolled in an educational program operated by an LEA;

2. enrolled in a private school program;

3. enrolled in a public or private preschool or day care program;

4. is not enrolled in school, except for students who have graduated with a regular high school diploma.

B. On going identification activities apply to highly mobile G/T students (such as migrant and homeless students) and students who are suspected of being G/T and disabled and in need of special education, even though they are advancing from grade to grade.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§1412. Responsibilities of the Child Search Coordinator**

A. Each LEA shall designate an individual as a Child Search Coordinator, who shall be held accountable for certain responsibilities prescribed by the SBESE as listed below.

1. The Child Search Coordinator shall ensure that the progress of referrals and evaluation activities required by §411, §413-414, and §430-436 for each student suspected of being G/T is tracked and that the collection and use of data to meet these requirements are subject to the confidentiality requirements in §517 of these regulations.

2. The Child Search Coordinator shall ensure that the parents of each student initially identified as suspected of being gifted/talented and in need of special educational services is provided a copy of all safeguards as defined in §1504 of *Bulletin 1706, Part B*. The parents shall also be afforded an opportunity for an explanation of these rights.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§1413. Students in an Educational Program Operated by the LEA**

A. A LEA shall identify a student as suspected of being G/T by the School Building Level Committee (SBLC). This committee shall coordinate and document the results, as appropriate, of educational screening, intellectual screening, talented screening, or other types of screening as needed, as defined in the *Pupil Appraisal Handbook*.

B. The SBLC, with the parents as invited participants, shall review all screening results to reach a decision whether to refer the student to pupil appraisal personnel for an individual evaluation. Parents shall be provided a report or summary by the SBLC on the status of the referral intervention at least once each grading period until a decision is reached. If the parents disagree with the SBLC decision, the parents shall be provided a copy of their rights which include a right to a due process hearing.

C. Within 10 LEA business days after receipt of the referral by the pupil appraisal office for an individual evaluation, pre-referral activities as listed in the *Pupil Appraisal Handbook* under "Initial Responsibilities" of the Evaluation Coordinator shall be conducted.

D. For an initial evaluation and the re-evaluation, the LEA shall obtain informed parental consent according to §1505 of *Bulletin 1706, Subpart B*. Receipt of parental consent for an individual evaluation by pupil appraisal personnel begins the sixty business days timeline.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§1414. Child Find for Students Enrolled in Private School Programs**

Students enrolled in private school programs shall be identified according to the procedures noted in §1413.A and §1462.A of *Bulletin 1706, Subpart B* and shall be referred to the school system's Child Search Coordinator.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§1415. Students out of School and/or Former G/T Students Residing in the State**

Students out of school, including students ages 3 through 22 years who are suspected of being G/T who have left a public school without completing their public education by obtaining a State diploma, shall be referred to the school system's Child Search Coordinator, who shall locate and offer enrollment in the appropriate public school program and refer them for an individual evaluation, if needed. Students may be enrolled with the development of an interim IEP based on their individual need, following the enrollment process. If the Louisiana evaluation is current, students may be enrolled with the development of a review IEP within five school days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§1417. Gifted/Talented Students Transferring from one LEA to another LEA within Louisiana**

Students who have been receiving G/T services in one LEA in Louisiana and who transfer to another LEA within Louisiana shall be enrolled in the appropriate special education program in the new LEA with the current IEP or the development of a review IEP within five school days of the transfer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§1418. Evaluation and Re-evaluation**

A. A full and individual evaluation shall be conducted for each student being considered for Gifted/Talented and related services under these Regulations to determine whether the student is a "G/T student" as defined in these Regulations; and to determine the educational needs of the student. The evaluation shall be conducted following the procedures in the *Pupil Appraisal Handbook*; and, if it is determined the student is a "G/T student," the results of the evaluation shall be used by the student's IEP team.

B. A re-evaluation of each G/T student will be conducted following the procedures in the *Pupil Appraisal Handbook*, and the results of any re-evaluations will be addressed by the student's IEP team in reviewing and, as appropriate, revising the student's IEP.

C. Informed parental consent shall be obtained before conducting an evaluation or a re-evaluation according to prior notice and consent as per §1504 and §1505 of *Bulletin 1706, Subpart B*.

Constitutes a failure by the LEA to comply with these Regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§1430. Pupil Appraisal Personnel**

A. LEAs shall regularly employ pupil appraisal personnel to conduct individual evaluations.

B. LEAs may, when necessary, contract with individuals or organizations to provide specialized assessments needed to provide a comprehensive individual evaluation of an identified student.

C. LEAs may, when necessary, use a combination of the approaches listed herein in §1430 A and §1430B.

D. Regardless of the approach used for conducting individual evaluations, LEAs retain full responsibility. Any failure by an employee or contractor to meet any requirements of this section constitutes a failure by the LEA to comply with these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§1431. Required Individual Evaluation**

A. An initial evaluation shall be conducted whenever the student is not enrolled in special education and one of the following conditions exists.

1. Informed parental consent for an initial evaluation has been requested and received by the LEA.

2. A direct request for an individual evaluation of an enrolled student from sources other than the SBLC shall be routed through the SBLC for the collection of the required screening information and the conduct of the pre-referral procedures. If the LEA suspects that the student is exceptional, an evaluation shall be conducted. If the LEA disagrees with the referral source and does not suspect that the student is exceptional, it may refuse to conduct an evaluation. When the LEA refuses to initiate an evaluation upon parental request, the parent shall be provided a copy of all procedural safeguards, which include the right to a due process hearing.

3. A final written decision has been issued by a court of competent jurisdiction requiring that an individual evaluation be conducted.

4. A written request for an individual evaluation has been issued by a hearing officer or by the State Level Review panel.

B. An individual re-evaluation shall be conducted by the IEP Team and the evaluation coordinator if conditions warrant, but at least every three years whenever the student is enrolled in special education and one of the following occurs:

1. It is requested in writing by the student's teacher or by the local school system's special education supervisor/director.

2. It is requested in writing by the student's parent(s).

3. A significant change in educational placement of a student is proposed by the LEA, the parent, or both.

4. A final written decision has been issued by a court of competent jurisdiction requiring that an individual re-evaluation be conducted.

5. A student is suspected of no longer being exceptional and no longer in need of services.

C. A LEA is not required to conduct a re-evaluation of G/T students who transfer with a current evaluation into its jurisdiction from another jurisdiction in Louisiana.

D. In the event a parent has privately obtained an independent educational evaluation, the LEA shall consider the individual evaluation in accordance with §1503 of these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§1433. Evaluation Coordination**

A. Upon identification of a student suspected of being exceptional, a qualified pupil appraisal staff member shall be designated as the evaluation coordinator.

B. The evaluation coordinator shall ensure that the evaluation is conducted in accordance with all requirements in the *Pupil Appraisal Handbook* including the following: initial responsibilities following receipt of referral, selection of participating disciplines, procedural responsibilities, and mandated timelines.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§1434. Evaluation Process and Procedures**

A. Individual evaluations shall be conducted according to the "Procedures for Evaluation" for each exceptionality as listed in the *Pupil Appraisal Handbook*.

B. The determination of gifted/talented shall be based upon the "Criteria for Eligibility" established in the *Pupil Appraisal Handbook* before the initial delivery of special education and related services.

C. All evaluations shall be conducted according to the prescribed standards, listed below.

1. Tests and other evaluation materials used to assess a student under these Regulations shall be selected and administered so as not to be discriminatory on a racial or cultural basis, and shall be provided and administered in the student's native language or other mode of communication, unless it is clearly not feasible to do so.

2. Materials and procedures used to assess a student with limited English proficiency shall be selected and administered to ensure that they measure the extent to which the student needs special education, rather than measuring the student's English language skills.

3. A variety of assessment tools and strategies shall be used to gather relevant functional and developmental information about the student, including information provided by the parents, and information related to the student's achievement.

4. Any standardized tests that are given to a student shall have been validated for the specific purpose for which they are used; they shall be administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests. If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the test, or the method of test administration) shall be included in the evaluation report.

5. Tests and other evaluation materials include those tailored to assess specific areas of educational need, not merely those that are designed to provide a single general intelligence quotient. In no event shall IQ scores be reported

or recorded in any individual student's evaluation report or cumulative folder.

6. No single procedure shall be used as the sole criterion for determining whether a student is a G/T student and for determining an appropriate educational program for the student.

7. The student shall be assessed in all areas related to the suspected G/T identification.

8. In evaluating each student suspected of being G/T according to established procedures, the evaluation shall be sufficiently comprehensive to identify all of the student's special education and related services needs.

9. Assessment tools and strategies that provide relevant information that directly assist persons in determining the educational needs of the student shall be selected.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§1435. Determination of Eligibility and Placement**

A. In interpreting evaluation data for the purpose of determining whether a student is a G/T student and what are the educational needs of the student, the multidisciplinary team shall comply with prescribed procedures.

1. The team shall draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background.

2. The team shall ensure that information obtained from all of these sources is documented and carefully considered.

B. Upon completing the administration of tests and other evaluation materials, the multidisciplinary team and the parent of the student shall determine whether the student is a G/T student, as defined in these regulations: and the LEA shall provide a copy of the evaluation report and the documentation of determination of eligibility to the parents.

C. A student may not be determined to be eligible under these regulations, if:

1. the determinant factor for that eligibility determination is limited English proficiency;

2. the student does not otherwise meet the eligibility criteria.

D. If a determination is made that a student is gifted/talented and needs special education and related services, an IEP shall be developed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§1436. Time lines**

A. There shall be no more than ten business days from the date of receipt of the referral for an individual evaluation of an identified student by pupil appraisal personnel to the date when the request was made for parental approval to conduct the individual evaluation.

B. Each individual evaluation shall be completed and the evaluation report disseminated within sixty business days of receipt of parental approval.

C. Extensions of evaluation timelines shall be justified as defined in the *Pupil Appraisal Handbook*.

D. The required triennial re-evaluation shall be completed on or before the third year anniversary date and shall include the activities noted in the *Pupil Appraisal 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 26:

#### **§1437. Determination of Needed Data for Re-Evaluations**

A. In conducting re-evaluations under these regulations, the IEP team and the evaluation coordinator shall comply with prescribed procedures as described below.

1. The team and the evaluation coordinator shall review existing evaluation data on the student, including evaluations and information provided by the parents of the student and current classroom-based assessments. (The team may conduct its review without a meeting.)

2. On the basis of that review and input from the student's parents, the team shall identify what additional data, if any, are needed to determine:

a. what are the present levels of performance and educational needs of the student;

b. whether the student continues to need special education and related services; and

c. whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the IEP of the student.

3. The team and the coordinator shall determine what tests and other evaluation materials shall be administered, as needed, to produce the data identified in 1437.A.2 above.

4. The LEA shall notify the student's parents, if the determination under 1437.A.2 above is that no additional data are needed to determine whether the student continues to be a G/T student, not only of that determination and the reasons for it but also of the right of the parents to request an assessment to determine whether, for purposes of services under these Regulations, the student continues to be a G/T student.

5. The LEA is not required to conduct the assessment described in 1437.A.4 above unless requested to do so by the student's parents.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§1440. IEP/Placement Responsibilities**

A. General Responsibilities. Each LEA develops and implements an IEP for each G/T student served by that agency as described below.

1. Each LEA is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising the IEP of a G/T student in accordance with all the requirements of this subpart and *Louisiana's G/T IEP Handbook*.

2. The IEP shall be developed using a format approved by the Department.

3. The LEA shall provide a copy of each completed IEP/Placement document signed by the officially designated representative of the LEA at no cost to the student's parent(s).

4. At the beginning of each school year, each LEA shall have in effect an IEP for every G/T student receiving special education and related services in that LEA.

5. When the student's IEP is in effect, it shall be accessible to each regular education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation.

6. Each teacher and service provider shall be informed of his or her specific responsibilities related to implementing the student's IEP and the specific accommodations, modifications, and supports that shall be provided for the student in accordance with the IEP.

7. An IEP that is consistent with FAPE shall be developed and implemented for eligible students by their third birthday.

B. Each LEA shall comply with the prescribed time lines as described below.

1. Each initial IEP/Placement document shall be completed within thirty calendar days from the date of dissemination of the written evaluation report to the special education director/supervisor.

2. Implementation of educational placement shall begin as soon as possible but no later than ten calendar days following receipt by the LEA of formal parental approval.

C. IEP's shall be reviewed and revised following prescribed procedures described below.

1. Each LEA shall ensure that each IEP/Placement review meeting is conducted at least annually.

2. Each LEA shall ensure that the team reviews the student's IEP periodically, but not less than annually, to determine whether the annual goals for the student are being achieved; and

3. Each LEA shall revise the IEP, as appropriate, to address concerns in any areas noted in §1444.

4. More than one IEP/Placement review meeting may be conducted at the discretion of the school system. If a parent makes a written request for an IEP/Placement review meeting, the school system shall respond in ten calendar days in writing to that request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§1441 IEP Team Participants**

A. Each LEA shall ensure that the IEP team for each student with exceptionality includes all of the required participants, as listed below.

1. One or both of the parents of the student.

2. At least one regular education teacher of the student (If the student is, or may be, participating in the regular education environment); the teacher shall to the extent appropriate, participate in the development, review and revision of the student's IEP, including:

a. the determination of supplementary aids and services, program modifications, and supports for school personnel that will be provided for the student;

b. when a regular education teacher calls for a reconvening of the individualized education program team for any G/T student assigned to his or her classroom on a full time basis in which the IEP requires an adjustment in the curriculum, instruction or services to be provided by the regular education teacher, this teacher shall participate on the

IEP team and shall participate continuously thereafter for as long as the student is assigned to his or her classroom.

3. At least one special education teacher, or when appropriate, at least one special education provider of the student. For review IEP meetings, this participant should be a special education teacher of the student or a service provider of the student.

4. An officially designated representative of the LEA who is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of G/T students. The LEA may designate another LEA member of the IEP team to serve also as the agency representative, if the above criteria are satisfied.

5. An individual who can interpret the instructional implications of evaluation results. This person may be a member of the team as described in 2, 3, 4, and 6.

6. At the discretion of the parent or LEA, other individuals who have knowledge or special expertise regarding the student, including related service personnel as appropriate. The determination of the knowledge or special expertise of any individual shall be made by either the parent or the LEA, whoever invited the individual to be a member of the IEP team.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§1442. Parent Participation**

A. LEAs shall take steps to ensure that one or both of the parents of the G/T student are present at each IEP/Placement meeting or are afforded an opportunity to participate. LEAs shall contact the parent(s) in writing regarding each meeting early enough to ensure that they will have an opportunity to attend and shall schedule the meeting at a mutually agreed upon time and place.

1. This notice shall indicate the purpose, time, and location of the meeting, as well as who shall be in attendance.

2. This notice shall inform the parents of the participation of other individuals on the IEP team who have knowledge or special expertise about the student.

B. If neither parent can attend a scheduled IEP/Placement meeting for which arrangements have been made in accordance with these regulations, other methods shall be used by the LEA to ensure parental participation, including making individual or conference telephone calls.

C. The meeting may be conducted without a parent in attendance provided that certain procedures are followed, as described below. method for parental participation is used and documented; or

1. The LEA has documented attempts to arrange a mutually agreed on time and place, such as:

a. detailed records of telephone calls made or attempted and the results of those calls;

b. copies of correspondence sent to the parents and any responses received;

c. detailed records of visits to the parents' home or place of employment and the results of those visits.

D. The LEA shall take whatever action is necessary to ensure that the parents understand the proceedings at a meeting, including arranging for an interpreter for parent(s) who are deaf or whose native language is other than English.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

**§1443. Parental Approval of IEP/Placement**

A. When securing parental approval of the initial IEP/Placement document, the LEA shall follow prescribed procedures.

1. Each LEA shall obtain informed parental consent prior to providing initial special education and related services. The IEP will be considered in effect after the parents indicate formal written approval by signing the IEP/Placement document.

2. If the parents withhold written approval of the educational placement, the LEA special education supervisor shall within 10 business days either:

a. recommend a modified educational placement to which the parents will provide approval; or

b. indicate to the parents in writing that no placement modification will be made, in which case the student shall be maintained in the present placement or be offered placement in the LEA with approval of the parents until the matter is resolved.

3. The parent(s) may request a hearing in accordance with §1507 of these Regulations in order to resolve any disagreement over the proposed IEP/Placement of the student.

4. If the LEA wishes to override the parental decision to withhold a formal written approval for the initial placement of the student in special education, the LEA may appeal to the appropriate State court within the time prescribed by State Law.

B. In conducting a review IEP/Placement, the IEP team may make decisions without the involvement of the parents, when the LEA is unable to obtain the parents' participation in the decision. In this case, the public agency shall have a record of its attempt to ensure their involvement, including information that is consistent with the requirements of §1442 of *Bulletin 1706, Subpart B*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

**§1444. G/T IEP Content and Format**

A. Each completed IEP shall contain a general overview of the student's instructional needs. Required components are listed below:

1. the student's strengths and support needs;

2. the concerns of the parents for enhancing the education of their child;

3. the results of the initial evaluation or most recent re-evaluation of the student;

4. as appropriate, the results of the student's performance on any general state or district wide assessment program;

5. the student's present levels of educational performance.

B. The IEP team shall also consider the following special factor and include, if needed, a statement addressing this issue on the IEP.

1. In the case of a student with limited English proficiency, it shall consider the language needs of the student as those needs relate to the student's IEP.

C. The IEP shall contain a statement of measurable annual goals, including benchmarks or short-term objectives, as listed below.

1. The statement shall relate to meeting the student's needs that result from the student's exceptionality and progress in an accelerated and enriched curriculum.

2. The statement shall relate to meeting each of the student's other educational needs that result from the student's exceptionality.

3. The statement shall relate to appropriate activities for the preschool-aged student.

D. The IEP shall contain a statement of the special education and related services and/or supplementary aids and services to be provided to the student, or on behalf of the student and a statement of the program modifications or supports for school personnel that will be provided for the student to achieve the following as listed below:

1. to advance appropriately toward attaining the annual goals;

E. The projected date for the beginning of the services and modifications and the anticipated frequency, location, and duration of those services and modifications shall be specified in the IEP.

F. The IEP shall contain a statement of how the student's progress toward the annual goals will be measured.

G. The IEP shall contain a statement of how the student's parents will be regularly informed (through such means as periodic report cards), at least as often as parents are informed of their regular education student's progress:

1. their child's progress toward the annual goals; and

2. the extent to which the progress is sufficient to enable the student to achieve goals by the end of the year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

**§1445. IEP Accountability**

A. The LEA shall provide special education and related services to a G/T student in accordance with the student's IEP.

B. The LEA shall make a good faith effort to assist the student to achieve the goals and objectives or benchmarks listed in the IEP.

C. No state agency, teacher, or other person be held accountable if a student does not achieve the growth projected in the annual goals and objectives or benchmarks. The State or public agency may establish its own accountability systems regarding teacher, school or agency performance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

**§1446. Least Restrictive Environment of a G/T Student**

A. For each educational placement of a G/T student, including a preschool student, the LEA shall ensure that prescribed placement procedures are implemented.

1. Placement shall be determined at least annually by a group of persons (including the parents and other persons knowledgeable about the student, the meaning of the evaluation data, and the placement options).

2. Placement must be based on an IEP/Placement document.

3. A continuum of alternative educational placements shall be available to the extent necessary to implement the IEP/Placement document for each G/T student. At a minimum, this continuum shall include (in order of restrictiveness as it applies to each student) the following:

a. instruction in regular classes (provisions shall be made for supplementary services, such as resource room or itinerant instruction, to be provided in conjunction with regular class placement), including;

- b. resource room;
- c. self contained;
- d. pre-school.

4. Nonacademic and extracurricular services and activities shall be provided in the manner necessary to afford G/T students an equal opportunity for participation in those services and activities; these services may include counseling services, recreational activities, athletics, transportation, health services, special interest groups or clubs sponsored by the LEA.

B. Each completed IEP shall contain the prescribed placement components:

1. The IEP shall identify the specific educational environment for the G/T student.

2. The four assurances listed below shall be provided when site determination decisions are made by the LEA.

a. The placement shall be in the school which the student would attend if not G/T unless the IEP of the student requires some other arrangement. If the placement is not in the school the student would normally attend, the placement shall be as close as possible to the student's home.

b. The school and the class shall be chronologically age appropriate for the student. No student shall be placed in a setting that violates the maximal pupil/teacher ratio or the three-year chronological age span.

c. The school/setting selected shall be accessible to the student for all school activities.

d. If the placement is other than regular/general education, the classroom shall be comparable to and integrated with regular classes.

e. Any deviation from the four assurances above shall be documented and justified on the IEP. In selecting an alternative placement, the LEA shall consider any potential harmful effect on the G/T student or on the quality of services needed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§1448. Change of Educational Placement**

A. During each IEP review or revision, the educational placement of the G/T student may be changed: the student's moving from one setting to another will not require a re-evaluation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§1449. IEP Declassification Placement**

A. When a re-evaluation indicates that a G/T student currently enrolled in special education no longer meets all the criteria in the *Pupil Appraisal Handbook* for classification as a G/T student, the LEA shall either:

1. place the student in regular education if the student is eligible for regular education and refer the student to the School Building Level Committee to determine his/her eligibility for appropriate accommodations or modifications;

2. recommend that the student be placed in an appropriate alternative placement for up to a one-year period of special education programming; the declassification program shall be provided in accordance with an IEP/Placement document and shall include a regular education membership using resource or itinerant services, if needed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§1462. G/T Students Enrolled by their Parents in Private Schools**

A. As used in this section, *private school students* means students enrolled by their parents in private school or facilities.

B. Private school G/T students shall be identified, located, and evaluated through prescribed procedures.

1. Each LEA shall locate, identify, and evaluate all private school G/T students, including religious-school students residing in the jurisdiction of the LEA. The activities undertaken to carry out this responsibility for private school G/T students shall be comparable to activities undertaken for G/T students in public schools.

2. Each LEA shall consult with appropriate representatives of private school G/T students on how to carry out the activities in paragraph §1462.B.1 above.

C. The provision of services to G/T students shall follow basic requirements.

1. No LEA is required to provide services for G/T students enrolled in private schools or in home school programs.

D. Complaints are limited to the conditions listed below.

1. The due process procedures in §1507 of these regulations apply to complaints that an LEA has failed to meet the child find requirements, including the procedures for evaluation and determination of eligibility found at §1411 - 1438. of these regulations.

2. Complaints that an LEA has failed to meet the requirements of §1462 of these regulations may be filed under the procedure in §1506.A. of Bulletin 1706, Subpart B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§1465. Facility Comparability**

Facilities identified as being for G/T students and the services and activities provided therein shall meet the same standards and level of quality as do the facilities, services, and activities provided to other students.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§1470. Local Advisory Panel**

A local advisory panel for the education of G/T students may be appointed by each LEA for the purpose of providing policy guidance with respect to special education and related

services for G/T students in their school district, with the approval of its governing authority. Membership of the panel should appropriately represent the populations served.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§1481. Appointment of a Supervisor/Director of Special Education**

A. Each LEA shall employ a certified supervisor/director of special education on a full- or part-time basis.

B. Each LEA shall designate a contact person for G/T issues.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§1482. Personnel Standards**

Personnel of local public and private educational agencies, including other local agency providers to G/T students (three through age twenty-one), shall meet appropriate entry level requirements that are based on the highest requirements in Louisiana applicable to the profession or discipline in which a person is providing special education or related services. (See §1369 in *Bulletin 1706, Subpart B* for more details.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§1483. Comprehensive System of Personnel Development**

A. LEAs shall have on file with the Department information to demonstrate that all personnel necessary to carry out these regulations within the jurisdiction of the agency are appropriately and adequately prepared, as consistent with the requirements of §482 above

B. To the extent the LEA determines appropriate, it shall contribute to and use the comprehensive system of personnel development of the Department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§1486. Procedure for Determination of Eligibility for State or Federal Funds**

Each LEA requesting State or Federal funds administered by the Department shall do so according to the procedures established by the Department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§1495. Interagency Coordination**

A. Each LEA shall, upon request, assist the Department in the development and implementation of any interagency agreements designed to improve the delivery of special education and related services to G/T students.

B. Each LEA shall enter into interagency agreements in §1830 to the extent necessary to comply with all provisions of these regulations.

C. Each agreement shall be consistent with §1800 of these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **Chapter 15. Procedural Safeguards**

#### **§1501. General Responsibility**

Each Local Educational Agency (LEA) shall establish and implement procedural safeguards that meet the requirements of these Regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§1502. Opportunity to Examine Records and Parental Participation in Meetings**

A. Parents of a G/T student shall be afforded an opportunity to inspect and review all educational records with respect to the identification, evaluation and educational placement of the student and with respect to the provision of a FAPE to the student.

B. Parents of a G/T student shall be afforded an opportunity to participate in meetings with respect to the identification, evaluation and educational placement of the student and the provision of a free appropriate public education to the student.

1. Each LEA shall provide notice consistent with §1504 of these regulations to ensure that parents of a G/T student have the opportunity to participate in meetings described in paragraph 1502.B. above.

2. A meeting does not include informal or unscheduled conversations involving LEA personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision, if those issues are not addressed in the student's IEP. A meeting also does not include preparatory activities in which public agency personnel engage to develop a proposal or response to parents' proposal that will be discussed at a later meeting.

3. Each LEA shall ensure that the parents of each G/T student are members of any group that makes decisions on the educational placement of their child. (See §1442 of these regulations)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§1503. Independent Educational Evaluation**

A. The parents of a G/T student have a right to obtain an independent educational evaluation of the student subject to this section. The LEA shall provide to the parent, upon request for an IEE, information about where an independent educational evaluation may be obtained and the criteria by which it shall be conducted.

1. *Independent educational evaluation (IEE)* means an evaluation conducted by a qualified examiner who is not employed by the school system responsible for the education of the student in question.

2. *Public expense* means that the school system either shall pay for the full cost of the evaluation or shall ensure that the evaluation is otherwise provided at no cost to the parent.

3. To avoid unreasonable charges for Independent Educational Evaluations (IEEs), an LEA may establish maximum allowable charges for specific tests. The maximum shall be established so that it allows parents to choose among the qualified professionals in the area and

eliminates only unreasonably excessive fees. The LEA shall allow parents the opportunity to demonstrate unique circumstances to justify an IEE that falls outside the district's criteria.

4. The LEA shall allow parents the opportunity to demonstrate unique circumstances to justify an IEE that falls outside the district's allowable charges.

B. An IEE is provided at public expense to the parents, if:

1. the parent disagrees with an evaluation provided by the LEA; or

2. a hearing officer requests an IEE as part of a due process hearing.

C. When an LEA is notified in writing by the parents that the parents disagree with the LEA's educational evaluation, the LEA has ten business days following the receipt of the notice to initiate a due process hearing to show that its evaluation is appropriate. If the LEA does not initiate a due process hearing within the 10 business days, the IEE shall be at public expense.

1. The request for an IEE may be presented orally if the parents are illiterate in English or have a disability that prevents the production of a written statement.

2. If, in a due process hearing, the hearing officer finds that the LEA's evaluation is appropriate, the parents still have the right to an independent evaluation, but not at public expense.

3. If the parents request an IEE, the LEA may ask for the parents' reasons why they object to the public evaluation. However, the explanation by the parents may not be required and the LEA may not unreasonably delay either providing the IEE at public expense or initiating a due process hearing to defend the public evaluation.

D. An IEE obtained at public expense shall meet the same criteria established by these Regulations and the *Pupil Appraisal Handbook*. The LEA may not impose conditions on obtaining an IEE, other than the criteria contained in the *Pupil Appraisal Handbook*.

E. If the parents obtain an IEE at private expense and the IEE meets the criteria in the *Pupil Appraisal Handbook*, the results of the evaluation shall be considered by the LEA; any decision made with respect to the provision of a free appropriate public education to the student may be presented as evidence at a hearing as described in §1507 of these regulations regarding the student.

F. The LEA is not required to use the IEE obtained at private expense as its only criteria for deciding the content of the student's special education program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§1504. Prior Notice and Procedural Safeguard Notice**

A. Written notice shall be given to the parents of a G/T student a reasonable time before the LEA:

1. proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student; or

2. refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student.

B. The prior notice shall include prescribed information as listed below:

1. a description of the action proposed (or refused) by the school, an explanation of why the LEA proposes or refuses to take the action, and a description of any other options the LEA considered with the reasons why those options were rejected;

2. a description of each evaluation procedure, test, record or report the LEA used as a basis for the proposed or refused action;

3. a description of any other factors that are relevant to the LEA's proposal or refusal;

4. a statement assuring that the parents of a G/T student have protections under the procedural safeguards; and

5. sources for parents to contact to obtain assistance in understanding the provisions of the procedural safeguards.

C. The notice shall be written in language understandable to the general public and provided in the native language of the parents or other mode of communication used by the parents, unless it is clearly not feasible to do so; and

1. if the native language or other mode of communication of the parents is not a written language, the Department and the LEA shall take steps to ensure that:

a. the notice is translated orally or by other means to the parents in their native language or other mode of communication;

b. the parents understand the content of the notice;

c. the LEA shall maintain written evidence that the requirements of paragraph C. of this section have been met.

D. Notices scheduling Individualized Education Program (IEP) Team meetings shall contain not only a description of the purpose, date, time, location of the meeting, but also a list of who will be in attendance.

E. If the notice relates to an action proposed by the LEA and requires parental consent under §1505 of these regulations, the LEA may give notice at the same time it requests parental consent.

F. Requirements for procedural safeguards notice are noted below:

1. A copy of the procedural safeguards shall be given to the parents of a G/T student, at a minimum:

a. upon the initial referral of the student for evaluation;

b. upon each notification of an IEP meeting;

c. upon re-evaluation of the student; and

d. upon receipt of a request for a due process hearing.

2. The procedural safeguards notice shall include a full explanation of all procedural safeguards available including the State's complaint procedures available in §1506 of these regulations.

3. The procedural safeguards notice shall meet the requirements of §1504.C. of this section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§1505. Parental Consent**

A. Parental consent shall be obtained before the LEA conducts an initial evaluation or re-evaluation and before the

LEA provides initial special education and related services to a G/T student.

B. Consent for the initial evaluation may not be construed as consent for initial placement as described in §1505A.2. above.

C. If re-evaluation involves initial criteria for any exceptionality, then written parental consent shall be obtained.

D. Parental consent is not required before the LEA reviews existing data as part of an evaluation or re-evaluation or before the LEA administers a test or other evaluation that is administered to all students unless, before administration of that test or evaluation, consent is required of parents of all students.

E. Whenever parental consent has been withheld, the LEA shall follow procedures to ensure a FAPE for the student.

1. If the parents' decision is to withhold consent for the initial evaluation or initial placement of the student in G/T services, the LEA may appeal. If the parents withhold consent for a re-evaluation, the LEA may request a due process hearing following the procedures outlined in §1507 of these regulations.

2. The parents may refuse special education services.

3. An LEA may not use a parents' refusal to consent to one service or activity to deny the parents or student any other service, benefit, or activity of the LEA except as required by these regulations.

F. Informed parental consent need not be obtained for re-evaluation if the LEA can demonstrate through detailed records of telephone calls made or attempted and the results of those calls, copies of correspondence sent to the parents and any responses received, detailed records of visits made to the parent's home or place of employment, and the results of those visits that it has taken reasonable measures to obtain that consent and the student's parent has failed to respond.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§1506. Complaint Management and Mediation**

A. Complaint management procedures have been established to resolve disputes regarding educational decisions between an LEA and parents.

1. Any individual or organization acting on behalf of a G/T student shall have a right to file a complaint when it is believed that there exists a violation of State law regarding the educational rights of a G/T student.

2. Complaints may be filed in writing, by telephone or in person. The complaint shall involve a violation that occurred not more than one year prior to the date of filing unless a longer period is reasonable because the violation is continuing, or the because complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint was received under this Section.

3. Upon receipt, the complaint shall be reviewed; the LEA shall be notified in writing and asked to provide specific information regarding the complaint.

4. The complainant shall be given the opportunity to provide additional oral or written information during the course of the investigation.

5. All information relevant to the complaint shall be reviewed by the Department and a decision shall be made as to whether an on-site visit is needed. A determination shall be made as to whether the LEA is violating any requirements of applicable Federal or State statutes, regulations, or standards.

6. Within 60 days of the receipt of the complaint, the Department shall issue a letter of findings to the complainant and to the LEA on each of the allegations of the complaint and on the reasons for the Department's decision.

7. The Department shall ensure effective implementation of the final decision through technical assistance, negotiations and corrective actions that achieve compliance. In resolving a complaint in which it has found a failure to provide appropriate services, the Department shall address how to remediate the denial of those services, including, as appropriate, not only the awarding of monetary reimbursement or other corrective action appropriate, to the needs of the student; but also appropriate provision of services for all G/T students.

8. The Department shall allow for extensions of the 60 day time lines only if exceptional circumstances exist.

9. If a complaint received is the subject of a due process hearing or if it contains multiple issues, of which one or more is part of the hearing, the Department shall set aside any part of the complaint that is being addressed in the hearing until the conclusion of the hearing. Any issue of the complaint that is not a part of hearing action shall be resolved, using the time limit and procedures above.

10. If an issue is raised in a complaint that has previously been decided in a due process hearing involving the same parties, the hearing decision is binding and the Department shall inform the complainant to that effect.

11. A complaint alleging a LEA's failure to implement a due process decision shall be resolved by the Department.

B. Mediation process procedures shall be available to parents and to the LEA personnel to allow them to resolve disputes involving any matter described in §504.A.1. At a minimum, mediation shall be offered whenever a due process hearing is requested under §507 and §519.I. and, §519.L of these regulations.

1. Mediation, which is voluntary on the part of both parties, shall be conducted by a qualified and impartial mediator trained in effective mediation techniques and assigned by the Department.

2. Mediation shall not be used to deny or delay a parent's right to a due process hearing or to deny any other rights.

3. The Department shall maintain a list of individuals who are qualified mediators knowledgeable in laws and regulations relating to the provision of special education and related services.

4. The impartial mediator may not be an employee of any LEA or State agency that is providing direct services to the student. The mediator shall not have a personal or professional conflict of interest. A person who otherwise qualifies as a mediator shall not be an employee of a LEA solely because he or she is paid by the agency to serve as a mediator.

5. The Department shall bear the cost of the mediation process.

6. The mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

7. An agreement reached by the parties to the dispute in the mediation process shall be set forth in a written mediation agreement.

8. Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings. The parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§1507. Impartial Due Process Hearing**

A. A parent or LEA may initiate a hearing on any of the matters described in §1504 A.1 and 2 of these regulations. A parent initiates a hearing by sending written notice to the LEA. The LEA initiates a hearing by sending a written notice to the parents and the Department. When a hearing has been initiated, the LEA shall inform the parents of the availability of mediation.

1. The written notice to the LEA for a due process hearing shall include the student's name and address, the name of the school the student is attending, a description of the nature of the problem, and a proposed resolution of the problem to the extent known and available to the person requesting the hearing.

2. The request for a due process hearing may be presented orally if the parents are illiterate in English or have a disability that prevents the production of a written statement.

3. A LEA may not deny or delay the parents' right to a due process hearing for failure to provide the required notice described above.

B. Any party to a hearing has the rights as described below.

1. The hearing shall be conducted at a time and place convenient to the parents, the student and the school system.

2. Any party to the hearing shall have the right to be accompanied and advised by counsel or by individuals with special knowledge or training with respect to the problems of exceptional students.

3. Any party to the hearing shall have the right not only to present evidence but also to confront, cross-examine, and compel the attendance of witnesses.

4. Any party to the hearing shall have the right to prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;

5. At least five business days prior to a hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluation that the party intends to use at the hearing.

6. The hearing officer may bar any party that fails to comply with the above requirement from introducing the relevant evaluation or recommendations at the hearing without the consent of the other party.

7. Any party to the hearing shall have the right to obtain a written or electronic, at the option of the parents, verbatim record of the hearing at no cost.

8. Any party to the hearing shall have a right to obtain written, or, at the option of the parent, electronic findings of fact and decisions at no cost.

C. A parent involved in a hearing shall have the right to:

1. have the student who is the subject of the hearing present;

2. open the hearing to the public;

3. be informed, upon request, of any free or low-cost legal and other relevant services when either the parents or LEA initiates a due process hearing; and

4. be informed that, if the parent prevails in a due process hearing, the parents may be able to recover attorney fees.

D. The Department, after deleting any personally identifiable information, and shall upon request, make those findings and decisions available to the public.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§1508. Hearing Officer Appointment and Hearing Procedures**

A. The hearing officer appointed shall be in compliance with requirements stipulated below.

1. A hearing officer shall be an impartial person knowledgeable about the legal and educational issues involved in assessing compliance with these Regulations.

a. A hearing officer may not be an employee of a public agency that is involved in the education or care of the student. A person who otherwise qualifies to conduct a hearing under this section is not an employee of the public agency solely because he or she is paid by the agency to serve as a hearing officer.

b. No person who has a personal or professional interest that would conflict with his or her objectivity may be appointed to serve as a hearing officer.

2. The Department and each LEA shall maintain the list of qualified hearing officers. The list shall include a statement of the qualifications of each of the hearing officers and, to the extent possible, shall include representation from all regions of the state. The Department shall ensure that these hearing officers have successfully completed an inservice training program approved by the Department. Additional inservice training shall be provided whenever warranted by changes in applicable legal standards or educational practices.

3. Appointments, which shall be for a period of three years, may be renewed. The Department shall annually review the activities of persons on the list and shall remove persons from the list if they leave the state, decline to participate actively in the hearing process, cease to be impartial, or do not carry out their responsibilities in a satisfactory fashion.

B. Hearing Procedures shall include the designating of a hearing officer as stipulated below.

1. The local special education administrator shall notify the Department of the need to assign a hearing officer within one day of receipt of a request for a hearing.

2. The hearing officer will be assigned within five days by the Department on a rotational basis from the Department's list of certified hearing officers. Consideration will be given to the location of the hearing when making the assignment.

3. After a hearing officer has been assigned, the Department shall provide both the complainant and local special education supervisor a written notice of the name of the hearing officer. The written notice shall be delivered by certified mail.

4. If the parent or LEA has reasonable doubt regarding the impartiality of a hearing officer, written information shall be submitted to the Department within three days of receipt of the notice of the assigned hearing officer.

5. The Department shall review any written challenge and provide a written decision and notice to the parent and LEA within three days after receipt of the written challenge.

6. If the Department determines that doubt exists as to whether the proposed hearing officer is truly impartial, another hearing officer shall be immediately assigned.

C. Procedures for conducting a hearing are stipulated below.

1. The hearing officer shall contact all parties to schedule the hearing and then shall notify in writing all parties and the Department of the date, time and place of the hearing.

2. The hearing shall be conducted in accordance with guidelines developed by the Department.

3. At the request of either party, the hearing officer shall have the authority to subpoena persons to appear at the hearing.

4. A final hearing decision shall be reached and a copy of the decision mailed to each party not later than 45 days after the receipt of the request for the hearing.

5. A hearing officer may grant specific extensions of time beyond the prescribed time requirements at the request of either party. When an extension is granted, the hearing officer shall, on the day the decision is made to grant the extension, notify all parties and the Department in writing, stating the date, time, and location of the rescheduled hearing.

6. A decision made by the hearing officer shall be final unless an appeal is made by either party.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§1509. Appeal of the Hearing Decision**

A. Any party aggrieved by the findings and decisions of the hearing may appeal the hearing decision.

B. A written request to review the hearing decisions shall be sent by certified mail to the Department within fifteen days of receipt of the hearing decision. The request shall state the basis upon which the review is requested.

C. The Department shall notify all parties of the request and activate the State Level Review Panel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§1510. The State Level Review Panel**

A. A state level review panel shall be composed of three hearing officers trained by the Department in special education law and due process procedures.

B. State Level Review Panel Members may not be employees of the State agency or of the LEA responsible for the education or care of the student. They shall not have participated in the due process hearing being appealed or have a personal or professional interest that would conflict with their objectivity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§1511. Appeal to the State Level Review Panel**

A. In conducting the appeal, the panel shall issue a decision within 30 days from receipt of the request for an appeal.

1. The panel shall examine the entire hearing record.

2. The panel shall ensure that procedures were consistent with the requirements of due process.

3. The panel shall seek additional evidence if necessary. If a hearing is held to receive additional evidence, the hearing rights stated in §1507.A and B of Bulletin 1706, Subpart B.

4. The panel shall afford all parties an opportunity for oral or written argument, or both, at the discretion of the reviewing panel. Any written argument(s) shall be submitted to all parties.

5. The panel shall make a final decision upon completion of the review.

B. In conducting the appeal, the panel shall provide copies of its written findings and the decision to all parties.

C. The Department, after deleting any personally identifiable information, shall annually make those findings and decisions available to the public.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§1512. Appeal to State or Federal Court**

Any party aggrieved by the decision and the finding of the State Level Review Panel has the right to bring a civil action in State or Federal court. The civil action shall be filed in State court within thirty (30) days of the decision. This timeline does not apply to Federal court.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§1514. Student Status during Proceedings**

A. During the pendency of any administrative or judicial proceeding regarding due process, the student involved shall remain in the current educational placement unless the parent and the LEA agree otherwise.

B. If the hearing involves an application for initial admission to a public school, the student with the consent of the parents, shall be placed in the public school program of the LEA until the completion of all the proceedings.

C. If the decision of a State Level Review Panel, as described in §1510 of these regulations in an administrative appeal agrees with the parent that a change of placement is appropriate, that placement shall be treated as an agreement between the State or the LEA and the parents for the purposes of §1514.A of these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§1515. Costs**

LEAs shall be responsible for paying administrative costs or reasonable expenses related to participation of LEA personnel in a hearing or appeal. The expenses of the hearing officer, the review panel, and stenographic services shall be paid by the Department in accordance with its policies and procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§1516. Surrogate Parents**

A. An LEA shall ensure that the rights of a student are protected if no parent (as defined in §1904) can be identified; if the LEA, after reasonable efforts, cannot discover the whereabouts of a parent; or if the student is a ward of the State (including a ward of the court or of a State agency).

B. A surrogate parent may represent the student in all matters relating to the identification, evaluation, and educational placement of the student and the provision of a free appropriate public education

C. A method for determining whether a student needs a surrogate parent and for assigning a surrogate parent shall be developed and implemented by each LEA.

1. A person assigned as a surrogate parent has no interest that conflicts with the interests of the student and; he/she is not an employee of the Department, the LEA, or any agency involved in the education or care of the student.

2. The person assigned shall have knowledge and skills that ensure adequate representation of the student.

D. An LEA may select as a surrogate parent a person who is an employee of a private agency that only provides only noneducational care for the student and who meets the standards in §1515 C of Bulletin 1706, Subpart B.

E. Payment of fees for service as a surrogate parent does not, in and of itself, render a person an employee of the LEA.

F. Any person appointed as a surrogate parent is protected by the "limited liability" of R.S. 17:1958.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§1517. Confidentiality of Information**

A. The Department shall have established policies and procedures for the implementation of the confidentiality requirements the Family Educational Rights and Privacy Act (FERPA) of 1974.

B. The Department shall have given adequate notice to inform parents fully about the requirements under identification, location, a evaluation of exceptional students.

1. The notice shall provide a description of the extent to which the notice is given in the native languages of the various population groups in the State.

2. The notice shall provide a description of the students on whom personally identifiable information is maintained, the types of information sought, the method the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information.

3. The notice shall provide a summary of the policies and procedures that participating agencies shall follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information.

4. The notice shall provide a description of all of the rights of parents and students regarding this information, including the rights under the FERPA.

5. Before any major identification, location, or evaluation activity, the notice shall be published or announced in newspapers, or media, or both, with circulation adequate to notify parents throughout the state of the activity.

C. In ensuring access rights, each LEA shall permit parents to inspect and review any educational records relating to their child which are collected, maintained or used by the LEA under these regulations. The LEA shall comply with the request without unnecessary delay and before any meeting regarding an individualized education program or hearing relating to the identification, evaluation, or placement of the student, and in no case shall the time exceed 45 days after the request is made. The LEA shall not destroy any educational records if there is an outstanding request to inspect and review the records.

1. The right to inspect and review any educational records includes the following:

a. the right to a response from the LEA to reasonable requests for explanations and interpretations of the records,

b. the right to request that the LEA provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records, and

c. the right to have a representative of the parent inspect and review the records when written permission by the parent is presented.

2. Any LEA may presume that parents have the authority to inspect and review records relating to his or her child unless the LEA has been advised that the parents do not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

D. In ensuring record of access, each LEA shall keep a record of parties attaining access to education records collected, maintained or used under these regulations (except access by parents or authorized parties of the LEA), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the record.

E. When any educational record includes information on more than one student, the parents of those students shall have a right to inspect and review only the information relating to their child or to be informed of that specific information.

F. Each LEA shall provide parents, on request, a list of the types and locations of education records collected, maintained or used by the LEA.

G. Each LEA may charge a fee for copies of records that are made for parents under these regulations if the fee does not effectively prevent the parents from exercising their right to inspect and review those records; but an LEA may not charge a fee to search or retrieve information under these regulations.

H. Amendments of records at parents' request shall follow prescribed guidelines.

1. The parents shall have a right to have the child's records amended when the parent believes that the information contained in the records is inaccurate, misleading, or otherwise in violation of the privacy or other rights.

2. After the receipt of a request by a parent of a G/T student to amend the student's record, the LEA shall decide within a reasonable time whether to amend the student's record.

3. If the LEA refuses to amend the records as requested by the parent, the LEA shall inform the parents of the right to request a hearing as stated below.

I. The LEA shall, on request, provide an opportunity for a hearing to challenge information in educational records to ensure that they are not inaccurate, misleading, or otherwise in violation of the parents' and child's privacy or other rights of the students.

1. A hearing under these regulations shall be conducted according to the procedures under the Family Educational Rights and Privacy Act (FERPA).

J. Results of a hearing regarding records have the following stipulations.

1. If, as a result of a hearing, the LEA decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall amend the information accordingly and so inform the parents in writing.

2. If, as a result of a hearing, the LEA decides that the information is not inaccurate, misleading, or otherwise in violation of privacy or other rights, the parents shall be afforded a right to place in the record comments they may have concerning the records or comments setting forth any reasons for disagreeing with the decision of the agency.

3. Any explanations placed in the record shall be maintained by the LEA as part of the records of the student as long as the record portion is maintained by the LEA; and if the records of the student or the contested portion are disclosed by the LEA to any party, the explanation shall also be disclosed to the party.

K. Parental consent shall be obtained before personally identifiable information is disclosed to anyone other than officials of the LEA collecting or using the information under these regulations subject to K.2 below of this section, or used for any purpose other than meeting a requirement of these Regulations.

1. A LEA or institution subject to the FERPA may not release information from education records to another LEA without parental consent unless authorized to do so under FERPA.

2. If parents refuse to provide consent under this Section, the requesting agency may file a written compliant.

Such a compliant shall be investigated by the Division according to adopted procedures for compliant management.

L. Each LEA shall protect the confidentiality of personally identifiable information at collection, storage, disclosure and destruction stages.

1. One official at each LEA shall assume responsibility for ensuring the confidentiality of any personally identifiable information.

2. Any persons collecting or using personally identifiable information shall receive training or instruction regarding the State's policies and procedures.

3. Each LEA shall maintain for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

M. The LEA shall inform parents when personally identifiable information collected, maintained or used is no longer needed to provide educational services to the student.

1. The information shall be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance records, classes attended, grade level completed, and year completed may be maintained without time limitation.

N. All rights of privacy afforded to parents are afforded to G/T students.

1. Under the regulations for the Family Educational Rights and Privacy Act of 1974, the rights of parents regarding education records are transferred to the student at age eighteen.

2. If the rights accorded to parents are transferred to a student who reaches the age of majority, the rights regarding educational records shall also be transferred to the student. However, the LEA shall provide any notice required, to the student and the parent.

O. *The Compliance Monitoring Procedures* includes the policies, procedures and sanctions that the State uses to ensure that the requirements of these Regulations are met.

P. Discipline procedures for G/T students are the same as for regular education students if no other *Pupil Appraisal Handbook* exceptionality is identified.

1. Discipline information remains with the regular education records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§1518. Transfer of Parental Rights at the Age of Majority**

A. When a G/T student reaches the age of majority (18 years of age), which applies to all students, he or she shall be afforded those rights guaranteed at such age.

1. The LEA shall provide any notice required by these regulations to both the individual and the parent; and all rights accorded to parents under these regulations transfer to the student.

2. All rights accorded to parents under these Regulations shall transfer to students who are incarcerated in an adult or juvenile, State or local correctional institutions.

3. Whenever rights transfer under these Regulations pursuant to paragraph §1518.A, 1 and 2 of Bulletin 1706, Subpart B, the LEA shall notify the individual and the parent of the transfer of rights.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

## **Chapter 16. Establishment and Operation of Special School District**

### **§1630. General Responsibilities**

A. Whenever a student enters the jurisdiction of the SSD consistent with the requirements of these regulations, SSD shall be responsible for either providing or causing to be provided all needed educational services to each student in full compliance with provisions of Chapter 4 of these regulations, and/or as stipulated in SDE *Bulletin 741*, as listed below.

1. The necessary certified personnel to ensure the conduct of an Individual Evaluation for each student within its jurisdiction in accordance with all requirements of §430-436 of these Regulations.

2. The development and implementation of an IEP for each G/T student in accordance with §1440-1446 of these regulations accordance with §1440-1446 of these Regulations.

3. Adequate administrative and instructional personnel to implement each student's educational plan.

4. Adequate personnel to establish and maintain the appropriate relationships with each affected LEA to provide for a smooth transition of educational services for each student leaving SSD.

5. The transmission of all educational records of a student leaving SSD to the LEA in which the student will be enrolled or seeking to be enrolled.

6. The adherence to all procedural safeguards of Chapter 15.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§1693. Procedural Safeguards**

Students and parents of G/T students enrolled in SSD shall be provided the procedural safeguards in accordance with Chapter 15 of these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§1695. Monitoring and Compliant Management**

Special School District shall develop an internal monitoring and compliant management system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§1695. Monitoring and Compliant Management**

Special School District shall develop an internal monitoring and compliant management system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

## **Chapter 17. Responsibilities of State Board Special Schools**

### **§1705. General Responsibilities**

A. Whenever a G/T student enters a State Board Special School in compliance with §401.D.6 of these regulations,

provision for a FAPE will be the responsibility of the LEA with jurisdiction .

B. State Board Special Schools shall, upon admitting a G/T student, assume the responsibility for providing the student a free appropriate public education in full compliance with all provisions of Chapter 14 of these regulations, including those related to child search, evaluation, IEP development and implementation, and placement; the provision of special education and related services; adherence to procedural safeguards; and certification of staff.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§1707. Enrollment (Admission and Release)**

A. Eligible students with exceptionalities shall be admitted to State Board Special Schools according to admission procedures established by the State Board Special School, approved by the State Board.

B. G/T students admitted to State Board Special Schools shall be released from enrollment according to procedures established by the State Board Special School, approved by the State Board, and in compliance with these regulations.

1. G/T students currently enrolled in State Board Special Schools shall not be referred to a city/parish LEA without a review of the current IEP/Placement (in compliance with §1440) being conducted by the State Board Special School and an LEA representative. *Notification of placement change consideration shall be made in writing to the LEAs before the IEP committee meeting.*

2. Prior to the release of any student placed in a State Board Special School through out- of- district placement procedures, the Division shall review and approve each release.

C. State Board Special Schools may enter into interagency agreements with Special School Districts for cooperative supportive efforts in the provision of services, such as child search, evaluation and coordination.

D. Admission to a State Board Special School does not necessarily mean that all educational services described in the IEP of the student shall be provided within such facility. Wherever appropriate, consistent with the rules for a least restrictive environment in §446, students admitted to State Board Special School programs shall participate in educational programs operated by city/parish school systems serving the geographic attendance area in which the facility is located.

### **§1709. Child Search Activities**

State Board Special Schools shall cooperate with each LEA in which the parents of a G/T student enrolled in the State Board Special School are domiciled to permit the LEA to carry out its ongoing responsibility with respect to child search when a student is in a State Board Special School.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§1712. Individual Evaluation**

Individual evaluations in State Board Special Schools shall be conducted in compliance with all requirements of §1430-1436 of these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§1713. IEP/Placement**

IEP/Placement of students enrolled in a State Board Special School shall be reviewed or revised and implemented in accordance with §440-459 of these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§1714. Procedural Safeguards**

G/T students and parents of G/T students enrolled in a State Board Special School shall be afforded all the procedural safeguards provided by Chapter 5 of these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

## **Chapter 18. Interagency Agreements**

### **§1801. General Statement**

A. Under R.S. 17:1941-1958 et seq., the SBESE has authorized the Department, Division of Special Populations under R.S. 17:1941-1958 et seq., to enter into any agreement developed with another public or private agency, or agencies, whenever such an agreement is consistent with the regulations; is essential to the achievement of full compliance with the regulations; is designed to achieve or accelerate the achievement of the full educational goal for all G/T students; and is necessary to provide maximum benefits appropriate in service, quality, and cost to meet the full educational opportunity goal in the State. Each LEA and the Department shall enter into all interagency agreements or other mechanisms for interagency collaboration specified in the regulations by following all the requirements in this part.

B. As used in this part, *interagency agreement* means an operational statement between two or more parties or agencies that describes a course of action to which the agencies are committed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§1810. Relationship Between LEAs and the Department**

The relationship between the Department and the LEAs is defined by these regulations in regard to providing a free appropriate public education to G/T students. Interagency agreements are not necessary to define such relationships.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§1820. Purpose of Interagency Agreements**

A. The purpose of interagency agreements is to assure that the standards established by State mandates and the SBESE to ensure a free appropriate public education for G/T students are upheld when they are implemented by an approved public or private agency not within the governance of the SBESE.

B. The agreements are mandated to provide maximum use of both human and fiscal resources in the delivery of

special education and related services and to identify or define a method for defining financial responsibility of each agency.

C. Agreements may be entered into with parties both inside and outside the state of Louisiana with special consideration being given to abide by the rules for least restrictive environment. Nothing in any agreement shall be construed to reduce assistance available or to alter eligibility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§1830. Types of Interagency Agreements**

SDE and SSD shall have agreements with the Department of Health and Hospitals (DHH), the Department of Social Services (DSS), and the Department of Public Safety and Corrections (DPS&C), and/or other state agencies and their sub-offices where appropriate. LEAs shall have those agreements whenever necessary for the provision of a free appropriate public education. The State School for the Deaf, State School for the Visually Impaired and the State Special Education Center now under the auspices of SSD shall have interagency agreements with 1) the LEA in whose geographic area they are located, 2) each LEA that places a student in the day programs of that facility, 3) regional state agencies, and 4) habilitation agencies with whom they share students.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§1840. Mandatory Content of Interagency Agreements**

A. Each agreement shall contain in writing information specified by Federal and State mandates and SBESE policy as listed below:

1. A statement describing the disparate governance being dealt with by the parties of the agreement.
2. The reason for writing the agreement.
3. The responsibilities of each party of the agreement for providing a FAPE, including policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services of service.
4. An identification of or a method for defining financial responsibility of each agency providing services, including conditions and terms of reimbursement.
5. All applicable State and Federal standards that will apply to the agreement being developed.
6. The data to be exchanged and the methods for exchanging it.
7. The statements with respect to Child Search and confidentiality issues.
8. The monitoring schedule and procedures.
9. The duration of the agreement.
10. The process for amending the agreement, to include the statement to the effect that the contract may be terminated upon thirty days written notice and the disposition of data/materials collected to that point.
11. Any information specific to an agency which is necessary for approval of the agreement by the Department.
12. The titles, names, and signatures of individuals authorized to enter into such agreements.

B. Interagency agreements shall be reviewed annually. It shall not be necessary to write a new agreement if there is documentation between parties that the existing signed agreement is still agreeable to all parties.

C. In addition, the agreements shall contain the three statements listed below for conformance to Division of Administration requirements.

1. The contractor shall not assign any interest in this contract and shall not transfer any interest in same (whether by assignment or novation), without prior written consent of the State, provided, however, that claims for money due or to become due to the Contractor from the State may be assigned to a bank, trust company, or other financial institution without such prior written consent. Notice of any such assignment or transfer shall be furnished promptly to the State

2. The Contractor shall agree to abide by all of the provisions of Louisiana Revised Statutes 43:31 in regard to printing of public documents. The contractor shall agree that prior to the final publication of any reports, documents, or publications of whatever nature for delivery to or used by the State, that the final proofs will be proofread by personnel of the Department and that no final printing will occur until the Contractor has been advised by the Department in writing that the text of materials to be printed has been proofread and approved.

3. It is hereby agreed that the Legislative Auditor of the State of Louisiana and/or the Office of the Governor, Division of Administrator auditors shall have the option of auditing all accounts of Contractor which relate to this contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§1860. Resolving Interagency Disputes**

A. The steps to be followed to resolve interagency disputes, to include funding, in an expeditious manner have been prescribed by the SBESE.

1. For agency disputes between educational agencies over which the SBESE has control, regular complaint procedures shall be followed.

2. Interagency disputes at the local, regional, or state level which involve either program or financial responsibility will be referred to the Office of the Governor.

3. If a dispute continues beyond these interventions, either party of the dispute may seek resolution from a court of competent authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

## **Chapter 19. Definitions**

### **§1901. Terms**

The terms defined in §1902-1999 of this Chapter are used throughout these regulations. Unless expressly provided to the contrary, each term used in these regulations shall have the meaning established by this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§1902. Abbreviations/Acronyms Used in These Regulations**

A. DSSC State Division of Social Services  
B. DHHC State Department of Health and Hospitals  
C. DPS&CC State Department of Public Safety and Corrections

D. FAPEC Free Appropriate Public Education

E. FERPA Family Educational Records and Privacy Act of 1974

F. G/T Gifted and/or Talented

G. IDEA Part B of the Individuals with Disabilities Education Act amends the Education for All Handicapped Children Act of 1975 formerly known as EHA (P.L. 94-142).

H. IEP The Individualized Education Program required by §440 of these Regulations

I. LEA Local Education Agency

J. LRE Least Restrictive Environment

K. SBESE State Board of Elementary and Secondary Education

L. Section 504 Section 504 of the Rehabilitation Act of 1973, 29 USC 706 and the Regulation issued by the U.S. Department of Education at 45 CFR 84

M. SSD#1 and SSD#2 Special School District Number One and Two

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§1903. Abbreviated Terms**

A. The Act Sections 1941 through 1958 of Chapter 8 of Title 17 of Louisiana Statutes of 1950, as amended

B. The Department The State Department of Education

C. The Division The Division of Special Populations of the Louisiana Department of Education

D. The State The State of Louisiana

E. The State Board The State Board of Elementary and Secondary Education

F. The State Board Special Schools The Louisiana Special Education Center; The Louisiana School for the Deaf; The Louisiana School for the Visually Impaired

G. The Superintendent-The State Superintendent of Public Elementary and Secondary Education

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§1904. Definitions**

*Age of Majority* as defined in Louisiana means eighteen years of age.

*At No Cost* all specially designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to regular education students or their parents as a part of the regular educational program.

*Business Day* Monday through Friday, except Federal and State holidays (unless holidays are specifically included in the designation of business day).

*Child Search Coordinator* the LEA employee who is responsible for the child search and child identification activities including that of locating the student. Child search in these regulations equates to Child Find in IDEA.

*Combination Self-contained and Resource Classroom* is an alternative education placement in which the same teacher provides special education instruction for students

who receive instruction in various special education alternative placements. These placements include self-contained, resource, and regular class.

**Confidentiality of Information** involves the storage, disclosure to third parties, retention and destruction of personally identifiable information.

**Consent** means that:

1. the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

2. the parent understands and agrees in writing to the carrying out of activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

3. the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. If a parent revokes consent, that revocation is not retroactive (i.e. does not negate an action that has occurred after the consent was given and before the consent was revoked).

**Counseling Services** services provided by qualified social workers, psychologists, guidance counselors, or otherwise qualified personnel.

**Day** calendar day unless otherwise indicated as business day or school day.

**Destruction** physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

**Due Process** See §1507. of these regulations.

**Education Records** the type of records covered under the definition of "education records" in 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974).

**Educational Diagnostic Services** include:

1. identifying special needs of students by providing: consultation and collaboration with teachers, school administrators, students and parents, classroom, observations and academic support services;

2. preventing educational problems through early identification of at risk students;

3. consulting with teachers and other school staff members in planning, implementing and evaluating school programs and strategies to meet the educational needs of individuals and groups of students;

4. designing interventions which will increase success in the academic setting which address academic needs of specific students;

5. administering, analyzing and interpreting informal and formal tests which will assist in identifying educational strengths and/or weaknesses in students who may need special education and related services;

6. working as part of a multidisciplinary team to assess the educational psychological, social and health needs of individual students.

**Educational Service Agency** a regional public multiservice agency that is authorized by State law to develop, manage, and provide services or programs to LEAs and recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary and secondary schools of the state. This authorization includes any other public

institution or agency having administrative control and direction over a public elementary or secondary school and includes entities that meet the definition of intermediate educational unit.

**Equipment** machinery, utilities, and built-in equipment and any necessary enclosures or structures to house the machinery, utilities, or equipment; and all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

**Excess cost** those costs that are in excess of the average annual per student expenditure in a LEA during the preceding school year for an elementary or secondary school student, as may be appropriate.

**Evaluation** is a multidisciplinary evaluation of a child/student, ages 3-21 years, in all areas of suspected exceptional ability through a systematic process of review, examination, interpretation, and analysis of screening data, developmental status, intervention efforts, interviews, observations, test results, as required, and other assessment information relative to the predetermined criteria as defined in the *Pupil Appraisal Handbook*.

**Evaluation Coordinator** is the pupil appraisal person who, in addition to serving as an examiner in the individual evaluation, is assigned the responsibilities described in §1433 for a particular student.

**Free Appropriate Public Education (FAPE)** special education and related services that:

1. are provided at public expense, under public supervision and direction, and without charge;

2. meet the standards of the Department;

3. include preschool, elementary school, or secondary school education in the State; and

4. are provided in conformity with an IEP.

**Foster Parent** See Parent.

**Gifted** children or youth who demonstrate abilities that give evidence of high performance in academic and intellectual aptitude.

**IEP Team** See §1441. of these regulations.

**Include** the items named are not all of the possible items that are covered, whether like or unlike the one named.

**Independent Educational Evaluation** an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the student in question. See §1503 of these regulations.

**Individualized Education Program** a written statement for each G/T student developed, reviewed, and revised in a meeting in accordance with §1440-1445.

**Individualized Education Program** a written statement for each G/T student developed, reviewed, and revised in a meeting in accordance with §1440-1445.

**Instruction in Regular Class** is an alternative education placement for eligible G/T students who receive special education and related services less than 21 percent of the school day outside the regular classroom.

**Interagency Agreement** an operational statement between two or more parties or agencies that describes a course of action to which the agencies are committed. The statement is

drawn up to be consistent with the mandatory provision of Part 1800 of *Bulletin 1706, Subpart B*.

**Least Restrictive Environment** the educational placement of a G/T student in a manner consistent with the Least Restrictive Environment Requirements in §1446 of *Bulletin 1706, Subpart B*.

**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 a LEA under state law.

**Native Language** when used with reference to an individual of limited English proficiency, means the language normally is used by that individual, or in the case of a student, the language normally used by parents of the student. In all direct contact with the student, including the evaluation of the student, the language normally used by the student in the home or learning environment. For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, braille, or oral communication).

**Nonacademic and Extracurricular Activities** See §446.A.10. of *Bulletin 1706, Subpart B*.

**Parent**

1. a natural or adoptive parent of a child;
2. a guardian but not the State if the child is a ward of the State;
3. a person acting in the place of a parent such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare; or
4. a surrogate parent who has been appointed in accordance with §1516 of *Bulletin 1706, Subpart B*. A foster parent may act as a "parent" under these regulations when the natural parents' authority to make educational decisions on the child's behalf has been extinguished under State law, and the foster parent:
  - a. has an ongoing, long-term parental relationship with the child;
  - b. is willing to make the educational decisions required of parents under these regulations; and
  - c. has no interest that would conflict with the interest of the child. Louisiana Law requires that the rights and responsibilities of a parent established by these regulations shall be exercised by the G/T student who attains the age of 18 years.

**Parent Counseling and Training** as a related service means assisting parents in understanding the special needs of their child; providing parents with information about child development; and helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.

**Participating Agency** for confidentiality purposes, means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained under these regulations.

**Personally Identifiable** information includes:

1. the name of the student, the student's parent, or other family member;
2. the address of the student;
3. a personal identifier, such as the student's social security number or student number; or
4. a list of personal characteristics or other information that would make it possible to identify the student with reasonable certainty.

**Prior Notice** See §1504. of these regulations.

**Psychological Services** as a related service includes:

1. administering psychological and educational tests and other assessment procedures;
2. interpreting assessment results;
3. obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;
4. consulting with other staff members in planning school programs to meet the special needs of students as indicated by psychological tests, interviews, and behavioral evaluations;
5. planning and managing a program of psychological services, including psychological counseling for students and parents; and
6. assisting in developing positive behavior intervention strategies.

**Public Agency** includes the SEA, LEAs, public charter schools that are not otherwise included as LEAs or ESAs and are not a school of a LEA. or ESA, and any other political subdivisions of the State that are responsible for providing education to G/T students.

**Public Charter School** See §1403. of these regulations.

**Public Expense** the LEA either pays for the full evaluation when an independent educational evaluation is being conducted or ensures that the evaluation is otherwise provided at no cost to the parent.

**Pupil Appraisal Personnel** personnel who meet the certification requirements for school personnel for such positions and who are responsible for the delivery of pupil appraisal services included in §1410-1436 in these Regulations.

**Qualified Personnel** personnel who have met State approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the individuals are providing special education and related services.

**Related Services** transportation and such developmental, corrective, and other supportive services as are required to assist a G/T student to benefit from special education. Related services include speech/language pathology and audiological services, psychological services, physical and occupational therapy, recreation including therapeutic recreation, early identification and assessment of disabilities in students, counseling services including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parental counseling and training.

**Resource Departmentalized** is an instructional setting in which students receive instruction from more than one special education teacher and each teacher teaches only a single content or subject matter area. The pupil/teacher ratio shall be consistent with those listed in Chapter 10 of these regulations. Instruction is provided for not more than the

maximum allowed for that exceptionality in a self-contained class at any given period.

*Resource Room* is a type of alternative education placement for special education and related services designed or adapted as a location where G/T students may receive all or a part of the special education required by their IEPs, and in which all of the following exist:

1. the pupil/teacher ratios established in Chapter 20 are used;
2. only G/T students are enrolled;
3. instruction is provided for not more than 12 students;
4. special education is provided by a teacher certified generically or in the area of exceptionality for which special education is provided;
5. students receive special education and related services for at least 21 percent, but no more than 60 percent, of the school day outside the regular classroom.

*School Building Level Committee* is a committee of at least three school level staff members; it may be identified as an SBLC, SAT, STAT, etc., at the discretion of the LEA. The committee 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 guidance 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 problem solve 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 instances, for enrolled students, it is only through the SBLC that a referral can be made to pupil appraisal services for an individual evaluation.

*School Day* any day, including a partial day, that students are in attendance at school for instructional purposes. School day has the same meaning for all students in school.

*School Health Services* as a related services means services, as defined in the *Pupil Appraisal Handbook*, provided by a certified school nurse or other qualified person.

*Self-contained Departmentalized* is an instructional setting in which students receive instruction from more than one special education teacher and in which each teacher teaches only one content area or subject matter. Pupil/teacher ratios shall be consistent with those listed in Chapter 10 of these regulations. Instruction is provided for not more than the maximum number allowed for that exceptionality in a self-contained class at any given period.

*Self-contained Special Education Class* is a type of alternative education placement in which special education instruction and related services are provided outside the regular classroom more than sixty percent of the school day.

*Social Work Services in Schools* as a related service includes preparing a social or developmental history on a G/T student; group and individual counseling with the student and family; working in partnership with parents and others on those problems in a student's living situation (home, school, and community) that affect the student's adjustment in school; and mobilizing school and community resources to enable the student to learn as effectively as possible in his or her educational program and assisting in developing positive behavioral intervention strategies.

*Special Education* specially designed instruction, at no cost to the parent, to meet the unique needs of the student with an exceptionality.

*Specially Designed Instruction* adapting, as appropriate, to the needs of an eligible student under these regulations, the content, methodology or delivery of instruction to address the unique needs of the student.

*Student with an Exceptionality* a student who, when evaluated in accordance with §1430 - 1436 of Bulletin 1706, Subpart B, was determined according to the *Pupil Appraisal Handbook* to have an exceptionality that significantly affects educational performance to the extent that special education is needed.

*Supplementary Aids and Services* aids, services, and other supports that are provided in regular education classes or other education-related settings to enable G/T students to be educated to the maximum extent possible.

*Surrogate Parent* See §1516. of these regulations.

*Talented* is possession of measurable abilities that give evidence of unique talent in visual and/or performing arts.

*Transportation* as a related service, means transportation required to assist a G/T student to benefit from a special education program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

**Chapter 20. State Program Rules for Special Education**

**§2001. Pupil/Teacher, and Pupil Appraisal Ratios for Public Education**

A. In providing services to all identified exceptional students, the number of students in each instructional setting shall not exceed the following numbers:

Setting	Preschool	Elementary	Secondary
Self-Contained		25	27
Resource Center		55	55
Resource or Self-Contained Departmentalized		93	98
Instruction in Regular Class		25	27
Resource		30	30
Pre-school			
A. Full Day	19		
B. Half Day	23		

B. Pupil appraisal members shall be employed by LEAs at the following rate:

1. Public School Ratios Based on Membership Educational Diagnosticians 1:2,400 or major fraction thereof.
2. School Psychologists 1:2,400 or major fraction thereof.
3. Social Workers 1:3,200 or major function thereof.
4. LEAs may substitute one pupil appraisal professional for another provided that all pupil appraisal services are provided in accordance with these regulations and the *Pupil Appraisal 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 26:

**Part A. State Funding and Program Rules for Gifted/Talented Students**

**I. Cost of Determining a Minimum Foundation Program for Gifted/Talented**

The Minimum Foundation Program (MFP) formula determines the cost of a minimum foundation program of education in all public elementary and secondary schools and helps to allocate the funds equitably to parish and city school systems. The MFP formula also recognizes increased costs for providing services to gifted/talented students by placing additional funding weights on G/T students. For specific fiscal and compliance issues refer to *Minimum Foundation Program Handbook*.

**II. Certification Requirements**

Personnel providing services to gifted/talented students shall currently meet all applicable standards as specified in *Louisiana Standards for State Certification of School Personnel (Bulletin 741)*.

**III. Travel and Preparation Time**

A. Each teacher providing instruction in an itinerant special education program shall be afforded adequate travel time and one instructional period per day for preparation and consultation with the student's regular teacher and other applicable school personnel.

B. Each teacher providing instruction in a resource room shall be afforded one instructional period per day for preparation and consultation with the student's regular teacher and other applicable school personnel.

Interested persons may submit written comments until 4:30 p.m., June 9, 2000, to Nina A. Ford, Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

**RULE TITLE: Bulletin 1706C Regulations for Implementation of the Children with Exceptionalities Act**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There are no estimated implementation costs or savings to state or local governmental units resulting from these proposed rule changes.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There is no estimated impact on revenue collections of state or local governmental units as a result of this measure.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

Adoption of this rule would not increase cost or diminish benefits to Gifted/Talented students in their education programs.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There are no estimated effects on competition and employment resulting from these proposed rule changes.

Marlyn Langley  
Deputy Superintendent  
0004#079

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

**Child Nutrition Program (LAC 28:I.943)**

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement an amendment to *Louisiana Administrative Code 28:I.943*, promulgated by the Board of Elementary and Secondary Education in LR 15:9 (January 1989). The major change in the Child Nutrition Program Appeals Procedure is to increase the timeline for scheduling and holding a hearing from 30 days to 90 days after the receipt of a request for appeal from an institution that is participating in, or applying to participate in, the United States Department of Agriculture meal reimbursement program. Other technical changes involve correction of the name of the section within the Louisiana Department of Education to whom appeal requests are submitted, and to clarify when the time frame for submission of the appeal results begins.

**Title 28**

**EDUCATION**

**Part I. Board of Elementary and Secondary Education Chapter 9. Bulletins, Regulations, and State Plans Subchapter B. State Plans**

**§943. Louisiana Child Nutrition Program Regulations**

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

**2. Louisiana Child Nutrition Programs Appeals Procedures**

a. Purpose. The rules and regulations contained in this Subpart shall govern and control procedures used by the Louisiana Department of Education, Division of Nutrition Assistance (hereafter referred to as state agency) for taking action against a school food authority or a child and adult care food program sponsor (hereafter referred to as institution).

**b. Service**

i. The service of the Notice of Proposed Action, Request for Appeal and Decision shall be made personally or by official U.S. postal certified mail, return receipt requested.

ii. Service upon an institution's authorized representative, officer, or agent constitutes service upon that institution.

iii. Service by certified mail is complete upon the date of receipt. An official U.S. postal receipt from the

certified mailing constitutes prima facie evidence of service. Any other orders, notices, or documents served or exchanged pursuant to these rules shall be done through personal service or the U.S. mail, all postage prepaid.

(a). For purposes of determining whether services have been timely made, if the last day of any deadline established by these rules falls on a weekend or a state holiday, service is considered timely made if received on or before the close of business of the next business day. If the deadline for service falls on a business day, service must be made before close of business that day.

C. Notice of Proposed Action. The state agency shall notify the institution, in writing, of the actions being taken through a "Notice of Proposed Action." This notice shall contain the following information:

1. a list of specific violations of program rules and regulations alleged to have been committed by the institution;

2. the specific amount of the fiscal sanction assessed against the institution, if any;

3. a statement specifying what action the institution must take to correct the violation(s) to avoid further proceedings;

4. a statement of the time lines related to the proposed action;

5. a statement as to the consequences for failing to timely take corrective actions, make payments, or make a Request for Appeal;

6. a statement of the institution's right to appeal the proposed action.

D. Request for Appeal

1. Institutions wishing to appeal proposed actions shall serve a Request for Appeal upon the agency designated in the Notice of Proposed Action within 15 calendar days from the date of receipt of the Notice of Proposed Action.

2. The Request for Appeal shall contain the following information:

a. a listing of what specific violations set forth in the Notice of Proposed Action are being appealed together with a short and plain statement of each contested issue of fact or law concerning each violation;

b. a statement specifying which of the following two forms of appeal an institution seeks:

i. a review of the records with the right to submit additional written information to dispute the proposed action; or

ii. a hearing. Appeals will be conducted by a fair and impartial hearing officer. The institution may be represented by legal counsel or another designated individual.

c. a statement as to the relief or remedy the institution seeks from the appeal.

E. Appeals on the Record; Submissions

1. Institutions opting to appeal proposed actions by a review of the record shall submit all documents and information, in written form, that they wish to have considered in the appeal to the hearing officer within 30 calendar days from the state agency's receipt of the Request for Appeal.

2. The state agency shall submit all documents and written information it wishes to have considered to the

hearing officer within 30 calendar days from the state agency's receipt of the Request for Appeal.

F. Notice and Time of Hearing. If a hearing is requested, the hearing officer shall schedule a hearing to be held within 90 calendar days from the date of receipt of the Request for Appeal by the designated agency. The hearing officer shall notify the institution in writing of the time, date, and place of the hearing, at least 10 calendar days in advance of the date of the hearing.

G. Effect of Appeal Upon Agency Actions. The Notice of Proposed Action issued to the institution shall remain in effect until the decision is rendered in the appeal. Participating institutions may continue to operate under the program during an appeal of a proposed action, unless the state agency action is based on imminent dangers to the health or welfare of children and that basis is stated in the Notice of Proposed Action. Institutions who continue to operate while appealing a termination shall not be reimbursed for any meals served from the date of service of the Notice of Proposed Action to the date of receipt of the appeal decision, if the decision upholds the termination.

H. Default. The hearing officer may declare any party in default who, without good cause shown:

1. fails to file brief or memorandums or exchange information and evidence as may be required by the hearing officer or these rules;

2. fails to appear at or participate in any pre-hearing conference;

3. fails to appear at or to participate in the hearing.

I. Evidence—Order of Hearing

1. Evidence that is material and relevant to an issue or inquiry before the hearing officer is admissible, unless objected to on grounds set forth herein. The introduction of evidence may be limited or barred upon objection of any party, or by the hearing officer upon his own motions. Hearings conducted under this rule are not bound by the formal rules of evidence prescribed for civil actions in district or higher courts, and in this connection, the following rules apply:

a. Hearsay evidence may be introduced if it corroborates competent evidence found in the record. The hearing officer will determine how much weight, if any, to give to hearsay evidence. Evidence concerning the reliability and probative value of any introduced hearsay evidence may also be admitted.

b. Unduly repetitious evidence, whether testimonial or documentary, shall be excluded when such exclusion will not materially prejudice the rights of a party.

c. The hearing officer may allow oral testimony to be given under direct examination by narration rather than through question and answer. The hearing officer may allow or require any oral testimony to be submitted in written form upon agreement of both parties.

J. Hearing Conduct and Decorum. At any hearing or meeting, the hearing officer shall have the authority to regulate the course of the proceedings and the conduct of all persons present, including the right to have any person, for misconduct or refusal to obey orders, removed from the hearing, banned from further participation or introduction of evidence, dismissed as a party or subjected to such other sanctions or restrictions he deems appropriate. The hearing

officer may, at any time, continue the meeting or hearing to another time and/or location and/or terminate the meeting or hearing to preserve order and decorum. The hearing officer is responsible for insuring that the hearing and/or review of records is conducted in an orderly, fair, and expeditious manner.

**K. Decision, Judicial Review, Records**

1. The hearing officer shall render a decision which shall include findings of fact, conclusions, and a statement as to the reasons for the decision. The decision shall be rendered within 120 days from the receipt of the Request for Appeal by the state agency. The decision shall be served to the institution by the hearing officer and shall constitute the final state agency action for purposes of judicial or other review. The decision of the hearing officer can be appealed as provided by law.

2. The appeal record, where the institution chooses to submit written information to dispute the state agency action taken against it, shall consist of that written information together with such written information as the state agency chooses to likewise submit to support its Notice of Proposed Action and the decision thereon.

3. The appeal record of a hearing shall consist of the evidence submitted at the hearing, a statement of any matter officially noticed, offers of proof, objections and rulings thereon, a recording of the hearing procedures, and the hearing officer's decision. A verbatim transcript of the recorded proceedings shall not be accomplished unless requested by one of the parties, at its cost, or in the event of a judicial appeal.

4. The hearing officer shall be the custodian of the records. The appeal record shall be maintained for a period of not less than three years from the date the decision is mailed to the institution or the date of the submission of the final claim for reimbursement of the action involving the appeal or resolving of the action, whichever comes later.

**AUTHORITY NOTE:** Promulgated in accordance with 7 CFR, 210-245.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education in LR 15:9 (January 1989), amended LR 16:297 (April 1990), LR 21:464 (May 1995), LR 26:

Interested persons may submit written comments until 4:30 p.m., June 9, 2000, 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: Louisiana Child Nutrition Program  
Regulations**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO  
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

Listed below are the estimated costs for distribution of revised appeal procedures to all institutions participating, or requesting to participate in the School Breakfast and Lunch Programs, and the Child and Adult Care Food Program:

Printing - \$200  
Postage - \$400      Funds are available.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE  
OR LOCAL GOVERNMENTAL UNITS (Summary)**

There will be no charge to institutions to receive a copy of the revised appeal procedures; therefore, there will be no effect on the 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 charge to any institution or individual to receive a copy of the revised appeal procedures, nor will there be any cost or economic benefit to persons consuming the meals being provided by the institutions.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)**

The State Division of Administrative Law (DAL) is the agency that the Division of Nutrition Assistance uses for appeal hearings; therefore, there is no effect on competition. Increasing the timeframe for scheduling hearings by the DAL will assist that agency in scheduling/holding hearings while maintaining compliance with the United States Department of Agriculture (USDA), Child Nutrition Program regulations 7 CFR Parts 210-220, 226-245.

Marlyn Langley                      H. Gordon Monk  
Deputy Superintendent          Staff Director  
0004#068                              Legislative Fiscal Office

**NOTICE OF INTENT**

**Student Financial Assistance Commission  
Office of Student Financial Assistance**

Tuition Opportunity Program for Students  
(TOPS) Definitions (LAC 28:IV.301)

The Louisiana Student Financial Assistance Commission (LASFAC) advertises its intention to revise the provisions of the Tuition Opportunity Program for Students (TOPS).

The full text of these proposed rules may be viewed in the emergency rule section of this issue of the *Louisiana Register*.

The proposed rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972.

Interested persons may submit written comments on the proposed changes until 4:30 p.m., May 20, 2000, to Jack L. Guinn, Executive Director, Office of the Student Financial Assistance, Box 91202, Baton Rouge, LA 70821-9202.

Mark S. Riley  
Assistant Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Tuition Opportunity Program for  
Students (TOPS)**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO  
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The implementation cost associated with publishing this rule revision in the *Louisiana Register* as emergency, notice and rule is approximately \$100. Since affected students are already award recipients, the four-year cost of their awards are included in the current budget and budget projections. There

- may be an insubstantial increase in the cost of tuition for a TOPS recipient who enters a professional program from an institution which had an undergraduate program that cost less than the highest cost public institution
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
 

No impact on revenue collections is anticipated to result from this rule change.
  - III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
 

TOPS award recipients who achieve the credentials to be admitted to professional schools prior to receiving a bachelor's degree may continue to receive their full four year award.
  - IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
 

No impact on competition and employment is anticipated to result from this rule.

Jack L. Guinn  
Executive Director  
0004#050

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Student Financial Assistance Commission Office of Student Financial Assistance

Tuition Opportunity Program for Students  
(TOPS) Definitions (LAC 28:IV. 703, 803)

The Louisiana Student Financial Assistance Commission (LASFAC) advertises its intention to revise the provisions of the Tuition Opportunity Program for Students (TOPS).

The full text of these proposed rules may be viewed in the emergency rule section of this issue of the *Louisiana Register*.

The proposed rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972.

Interested persons may submit written comments on the proposed changes until 4:30 p.m., May 20, 2000, to Jack L. Guinn, Executive Director, Office of the Student Financial Assistance, Box 91202, Baton Rouge, LA 70821-9202.

Mark S. Riley  
Assistant Executive Director

#### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

##### RULE TITLE: Tuition Opportunity Program for Students

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
 

The implementation cost associated with publishing these rule revisions in the *Louisiana Register* as emergency, notice and rule is approximately \$100. The purpose of this action is to correct the existing rule, therefore costs for funding additional TOPS awards are not anticipated to increase as a result of this rule change. There are no costs inconsistent with current budgetary appropriations for this purpose.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
 

No impact on revenue collections is anticipated to result from this rule change.

- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
 

TOPS applicants will have rules that are consistent with statutory core curriculum requirements for the award.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
 

No impact on competition and employment is anticipated to result from this rule.

Jack L. Guinn  
Executive Director  
0004#051

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Student Financial Assistance Commission Office of Student Financial Assistance

Tuition Opportunity Program for Students  
(TOPS) Obligation, Deferment and Cancellation  
(LAC 28:IV.911 and 2105)

The Louisiana Student Financial Assistance Commission (LASFAC) advertises its intention to revise the provisions of the Tuition Opportunity Program for Students (TOPS).

The full text of these proposed rules may be viewed in the emergency rule section of this issue of the *Louisiana Register*.

The proposed rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972.

Interested persons may submit written comments on the proposed changes until 4:30 p.m., May 20, 2000, to Jack L. Guinn, Executive Director, Office of the Student Financial Assistance, Box 91202, Baton Rouge, LA 70821-9202.

Mark S. Riley  
Assistant Executive Director

#### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

##### RULE TITLE: Tuition Opportunity Program for Students

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
 

The implementation cost associated with publishing this rule revision in the *Louisiana Register* as emergency, notice and rule is approximately \$100. Costs for Funding for TOPS Teacher and Rockefeller awards will not increase as a result of this rule change.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
 

No impact on revenue collections is anticipated to result from this rule change.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
 

TOPS Teacher and Rockefeller award recipients will be provided a less restrictive provision for monetary discharge of their obligation to teach. Repayment will begin only when the former recipient leaves school.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No impact on competition and employment is anticipated to result from this rule.

Jack L. Guinn  
Executive Director  
0004#052

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Environmental Quality  
Office of Environmental Assessment  
Environmental Planning Division**

Beneficial Environmental Projects (BEPs)  
(LAC 33:I.2501-2505)(OS037E)

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 adopt the Office of the Secretary regulations, LAC 33:I.Chapter 25 (Log #OS037).

This proposed rule serves to facilitate the settlement of environmental actions and promote the use of beneficial environmental projects (BEPs). It establishes guidance for the use of BEPs in the settlement of enforcement cases with the department. Without this rule, projects that are otherwise advantageous to the state may be delayed, withdrawn, or not performed. R.S. 30:2011(D)(1), 2031, and 2050.7 require the department to promulgate rules to regulate the use of BEPs in the settlement of enforcement cases. The basis and rationale for this proposed rule are to establish the use of beneficial environmental projects that will substantially benefit neighboring communities and reduce the load of pollutants discharged into the environment.

This proposed rule meets an exception listed in R.S. 30:2019(D)(3) and R.S.49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. 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 1. Department Administrative Procedures**

**Chapter 25. Beneficial Environmental Projects**

**§2501. Applicability**

These regulations apply when the department has decided to enter into a settlement in which a beneficial environmental project (BEP) is utilized. The department reserves the right to settle for the amount of cash penalty, if any, it deems appropriate in considering all of the circumstances relating to the case in which the settlement is perfected. The decision to enter into a settlement that includes a BEP is solely within the discretion of the department. Nothing in these regulations requires that the department enter into a settlement or that the settlement include BEPs. Any BEP may be accepted if it meets the terms of these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011(D)(1), 2031, and 2050.7(E).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

**§2503. Definitions**

*Beneficial Environmental Project (BEP)* a project that provides for environmental mitigation which the defendant/respondent is not otherwise legally required to perform, but which the defendant/respondent agrees to undertake as a component of a settlement of a violation(s) or penalty assessment.

*Environmental Mitigation* that which tends to lead in any way to the protection from, reduction of, or general awareness of potential risks or harm to public health and the environment. Environmental mitigation includes any and all projects that conform to the requirements set forth in LAC 33:I.2505.

*Not Otherwise Legally Required to Perform* the approved project is not required of the defendant/respondent by any federal, state, or local law, regulation, or permit (except that early compliance may be allowed) or actions which the defendant/respondent may be required to perform as injunctive relief in the instant case or as part of a settlement or order in another action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011(D)(1), 2031 and 2050.7(E).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

**§2505. Project Categories**

A. A BEP must be within one or more of the following categories:

1. Public Health. A public health project provides diagnostic, preventative, and/or remedial components of human health care that is related to the actual or potential damage to human health caused by a violation of environmental law or mismanagement of substances containing constituents detrimental to human health. This may include, but is not limited to, epidemiological data collection and analysis, medical examinations of potentially affected persons, collection and analysis of blood/fluid/tissue samples, medical treatment, and rehabilitation therapy.

2. Pollution Prevention

a. A pollution prevention project is one that reduces the generation of pollution through "source reduction," i.e., any practice that reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise being released into the environment, prior to recycling, treatment, or disposal. (After the pollutant or waste stream has been generated, pollution prevention is no longer possible and the waste must be handled by appropriate recycling, treatment, containment, or disposal methods.)

b. Source reduction may include equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, inventory control, or other operation and maintenance procedures. Pollution prevention also includes any project which protects natural resources through conservation or increased efficiency in the use of energy, water, or other materials. In-process recycling, wherein waste materials produced during a manufacturing

process are returned directly to production as raw materials on site, is considered a pollution prevention project.

c. In all cases, for a project to meet the definition of pollution prevention, there must be an overall decrease in the amount and/or toxicity of pollution released to the environment, not merely a transfer of pollution among media. This decrease may be achieved directly or through increased efficiency (conservation) in the use of energy, water, or other materials.

3. Pollution Reduction. If the pollutant or waste stream already has been generated or released, a pollution reduction approach, which employs recycling, treatment, containment, or disposal techniques, may be appropriate. A pollution reduction project is one that results in a decrease in the amount and/or toxicity of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise being released into the environment by an operating business or facility by a means which does not qualify as "pollution prevention." This may include the installation of more effective end-of-process control or treatment technology, or improved containment, or safer disposal of an existing pollutant source. Pollution reduction also includes "out-of-process recycling," wherein industrial waste collected after the manufacturing process and/or consumer waste materials are used as raw materials for production off-site.

4. Environmental Restoration and Protection. An environmental restoration and protection project is one that goes beyond repairing the damage caused by the violation to enhance the condition of any ecosystem or geographic area. These projects may be used to restore or protect natural environments (including ecosystems) and man-made environments (including the removal/mitigation of contaminated materials, such as soils, asbestos, and leaded paint, from facilities and buildings). Also included is any project which protects the ecosystem from actual or potential damage resulting from violations of state environmental regulations or improves the overall environmental condition of the ecosystem or geographic area. Examples of these projects include: restoration of a wetland; purchase and management of a watershed area or environmentally sensitive area; and providing for the protection of endangered species, i.e. developing conservation programs or habitat protection and enhancement.

#### 5. Assessments and Audits

a. The four types of assessments/audits are:

- i. pollution prevention assessments;
- ii. site assessments;
- iii. environmental management system audits; and
- iv. compliance audits.

b. These assessment or audit projects must be performed by an entity approved by the department. The defendant/respondent must agree to provide a certified copy of the assessment or audit to the department along with an implementation report to detail the action(s) taken and/or to defend the facility's decision to forego implementation of the suggested changes listed in the audit report. Settlement agreements which include assessment and/or audit projects may be constructed with stipulated penalty amounts for failure to implement suggested changes included in the report that the department deems appropriate based on an assessment of the certified implementation report provided

by the facility. Assessments and audits may not include projects that are required by enforcement and/or legal requirements.

6. Environmental Compliance Promotion. An environmental compliance promotion project provides training or technical support to identify, achieve and maintain compliance with applicable statutory and regulatory requirements; avoid committing a violation with respect to such statutory and regulatory requirements; go beyond compliance by reducing the generation, release, or disposal of pollutants to a level below the legally required limits; or promote environmental education, including awareness of potential risks or harm to the public health and the environment. In all cases, the department will specify the approved party responsible for developing and providing the environmental compliance promotion project. Acceptable projects may include, but are not limited to, the production and or sponsorship of seminar(s) related to environmental obligations, regulations, and improvement techniques.

7. Emergency Planning, Preparedness, and Response. An emergency planning and preparedness project provides assistance to a responsible state or local emergency planning, preparedness, or response entity. This is to enable these organizations to further fulfill their obligations to collect information to assess the dangers of hazardous chemicals present in a response situation, to develop emergency plans and/or procedures, to train emergency response personnel, and to better respond to emergency situations. These projects may include providing computers and software, communication systems, chemical emission detection and inactivation equipment, or hazardous materials equipment or training.

8. Other Projects. Projects determined by the department to have environmental merit that do not fit within at least one of the seven categories above may be accepted if they are otherwise fully consistent with the intent of these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011(D)(1), 2031 and 2050.7(E).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

A public hearing will be held on May 25, 2000, at 1:30 p.m. in the Trotter Building, Second Floor, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by OS037. Such comments must be received no later than June 1, 2000, at 4:30 p.m., and should be sent to Patsy Deaville, Regulation Development Section, Box 82178, Baton Rouge, LA 70884-2178 or to FAX (225) 765-0486. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Regulation Development Section at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of OS037.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA

70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard, West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/planning/regs/index.htm>.

James H. Brent, Ph.D.  
Assistant Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Beneficial Environmental  
Projects (BEPs)**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
No implementation costs or savings to state or local governmental units are expected as a result of this rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
To the extent that the regulated community is allowed to participate in beneficial environmental projects in lieu of the payment of fines and penalties, less revenue will be credited to the Hazardous Waste Site Cleanup Fund. Upon the accumulation of \$6 million in this fund any additional monies which would have been credited to this fund are instead paid into the Environmental Trust Fund.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
In most cases where the beneficial environmental project involves environmental mitigation or restoration, if the cost of a beneficial environmental project is equivalent to the fines and penalties to which an entity might be subject, there will be no net benefit or cost to that entity. Where the beneficial project involves pollution prevention or reduction, an entity may actually realize a net benefit from long term cost savings and reduced liability although the expenditures to achieve the pollution prevention or reduction are equivalent to the fines and penalties to which that entity might be subject.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
No effect on competition or employment is expected as a result of this rule.

James H. Brent, Ph.D.  
Assistant Secretary  
0004#058

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Environmental Quality  
Office of Environmental Assessment  
Environmental Planning Division**

Fugitive Emission Control  
(LAC 33:III.2121)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air Quality regulations, LAC 33:III.2121 (Log #AQ201).

The proposed rule removes the word "pipeline" and removes a redundant phrase to provide clarification to the regulations for monitoring requirements and exemptions to monitoring requirements for petroleum refineries, SOCM, MTBE, and polymer manufacturing industry for fugitive emission control of organic compounds. The basis and rationale for the proposed rule are to provide clarifications to the existing regulations.

This proposed rule meets an exception listed in R.S. 30:2019(D)(3) and R.S.49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. 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 21. Control of Emission of Organic  
Compounds**

**Subchapter A. General**

**§2121. Fugitive Emission Control**

\* \* \*

[See Prior Text in A - C.1.a.i]

- ii. valves in liquid service; and

\* \* \*

[See Prior Text in C.1.a.iii - b.i]

- ii. valves in gas service;

\* \* \*

[See Prior Text in C.1.b.iii]

- iv. valves in light liquid service at SOCM, MTBE, and Polymer Manufacturing Plants; and  
v. pumps in light liquid service at SOCM, MTBE, and Polymer Manufacturing Plants.

\* \* \*

[See Prior Text in C.1.c-4.b]

- c. Flanges, inaccessible valves, valves that are unsafe to monitor, check valves (including similar devices not externally regulated). Inaccessible valves should be monitored on an annual basis at a minimum. Unsafe-to-monitor valves should be monitored when conditions would allow these valves to be monitored safely, e.g., during shutdown.

\* \* \*

[See Prior Text in C.4.d-G. Liquid Service]

**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 16:959 (November 1990), LR 17:654 (July 1991), LR 21:1330 (December 1995), LR 22:1128 (November 1996), LR 22:1212 (December 1996), LR 24:22 (January 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

A public hearing will be held on May 25, 2000, at 1:30 p.m. in the Trotter Building, Second Floor, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by AQ201. Such comments must be received no later than June 1, 2000, at 4:30 p.m., and should be sent to Patsy Deaville, Regulation Development Section, Box 82178, Baton Rouge, LA 70884-2178 or to fax (225) 765-0486. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Regulation Development Section at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of AQ201.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard, West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/planning/regs/index.htm>.

James H. Brent, Ph.D.  
Assistant Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Fugitive Emission Control**

- 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 for this proposal.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There will be no effect on revenue collections of state or local governmental units as a result of this rule.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
There will be no costs or economic benefits to persons or nongovernmental groups as a result of this rule.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
This proposal will have no effect on competition or employment.

James H. Brent, Ph.D. Assistant Secretary 0004#020	Robert E. Hosse General Government Section Director Legislative Fiscal Office
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**NOTICE OF INTENT**

**Department of Environmental Quality  
Office of Environmental Assessment  
Environmental Planning Division**

Laboratory Accreditation  
(LAC 33:I.4501, 4503, 4701-4707, 4711,4717, 4719, 4901, 5103, 5303, 5311, 5315, 5701, 5705, 5901-5915)(OS035)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been

initiated to amend the Office of the Secretary regulations, LAC 33:I.Subpart 3 (Log #OS035).

The laboratory accreditation rule requires accreditation of commercial environmental laboratories by the department every three years. The accreditation program requires third-party audits, submission of samples for independent analysis, and inspection of regulated laboratories. The rule provides for quality assurance/quality control procedures, laboratory personnel qualifications, and sampling protocol. The proposed rule establishes the requirements to ensure the quality of data generated by commercial environmental laboratories that are accredited by the department, and provides clarification to facilitate a better understanding of the program requirements. The proposed rule also promulgates the changes made in the emergency rule OS035E, which was effective on December 15, 1999. These changes extend the deadline to apply for accreditation to July 1, 2000, and the deadline for accreditation by the department to December 31, 2000. The basis and rationale for the proposed rule are to provide clarification for the laboratory accreditation rule and to promulgate the changes in the emergency rule, OS035E.

This proposed rule meets an exception listed in R.S. 30:2019(D)(3) and R.S.49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. 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 3. Laboratory Accreditation  
Chapter 45. Policy and Intent  
§4501. Description and Intent of Program**

- A. Description and Intent of Program
  1. These regulations provide requirements for an accreditation program specifically applicable to commercial laboratories, wherever located, that provide chemical analyses, analytical results, or other test data to the department, by contract or by agreement, and the data is:
    - a. submitted on behalf of any facility, as defined in R.S. 30:2004;
    - b. required as a part of any permit application;
    - c. required by order of the department;
    - d. required to be included on any monitoring reports submitted to the department;
    - e. required to be submitted by contract; or
    - f. otherwise required by department regulations.
  2. The department laboratory accreditation program is designed to ensure the accuracy, precision, and reliability of the data generated, as well as the use of department-approved methodologies in the generation of that data. Laboratory data generated by commercial environmental laboratories that are not accredited under these regulations will not be accepted by the department.

\* \* \*

[See Prior Text in B-B.6]

7. radiologicals/radioassays;
8. bioassays/biomonitoring/toxicological testing; and
9. asbestos.

\* \* \*

[See Prior Text in C-E]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:917 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

**§4503. Definitions**

A. When used in these rules and regulations, the following words and phrases shall have the meanings ascribed to them below:

\* \* \*

[See Prior Text]

*Commercial Laboratory* any laboratory, wherever located, that performs analyses or tests for third parties for a fee or other compensation and provides chemical analyses, analytical results, or other test data to the department, by contract or agreement, and the data is: submitted on behalf of any facility, as defined in R. S. 30:2004; or required as a part of any permit application; or required by order of the department; or required to be included on any monitoring reports submitted to the department; or otherwise required by department regulations. The term commercial laboratory does not include laboratories accredited by the Louisiana Department of Health and Hospitals in accordance with R. S. 49:1001 et seq.

*Corrective Action Proficiency Test Sample* a proficiency test sample of known composition provided by an external source (e.g., EPA) that is used to evaluate lab performance after completion of required corrective action(s) of a failed proficiency evaluation test round.

\* \* \*

[See Prior Text]

*Field Test* any activity or operation conducted on-site resulting in the measurement of a specific parameter. Field tests are generally conducted at or near the site of sampling and include soil classification, pH, temperature, flow rate, fugitive emissions monitoring of valves, pumps, flanges, etc.

\* \* \*

[See Prior Text]

*Interim Status* a status that exists in the accreditation process wherein all application requirements have been met by the laboratory, but formal accreditation status has not been granted by the department. Interim status is granted on a case-by-case basis at the discretion of the department and shall not exceed one year in length.

\* \* \*

[See Prior Text]

*NRCC* Nuclear Regulatory Commission.

*Primary Accrediting Authority* for the purpose of NELAP Accreditation, the Louisiana Department of Environmental Quality, with the exception of those laboratory analyses accredited under the regulatory and statutory authority of the Louisiana Department of Health and Hospitals.

\* \* \*

[See Prior Text]

*Traceable Material* any material whose true value or true measurement can be related to a standard reference, usually national or international, all having stated uncertainties (e.g., NIST traceable thermometers, standards, reagents, etc.).

\* \* \*

[See Prior Text]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:918 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

**Chapter 47. Program Requirements**

**§4701. Accreditation Process**

A. The department accreditation process comprises four basic steps:

1. the submittal to the department's Office of Management and Finance, Laboratory Services Division of a written request from the laboratory in the form of an application provided by the department, along with payment of all applicable fees;

\* \* \*

[See Prior Text in A.2-4]

B. When all requirements for accreditation have been successfully fulfilled, the department shall grant the applicant laboratory a formal notice of certification that lists those analytes and methods for which the laboratory is certified. The certificate must be posted within public view in the laboratory setting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:919 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

**§4703. Application for Accreditation**

\* \* \*

[See Prior Text in A]

B. An application for environmental laboratory accreditation shall be made in writing to the Office of Management and Finance, Laboratory Services Division. This application will provide all requested information and be accompanied by the appropriate application fee. Information will include at least one satisfactory round of the most recent department-specified proficiency evaluation test results or an analytical data package for test categories where no accessible proficiency tests exist. Supplemental information may be required.

\* \* \*

[See Prior Text in C-D]

E. In cases where all application requirements have been met, including review of all methodology and quality assurance program data, a special status of "interim status" may be granted at the discretion of the department on a case-by-case basis. Interim status shall not exceed one year in length. Before a laboratory is granted full accreditation, all requirements of these regulations must be met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:919 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

**§4705. Categories of Accreditation**

A. At the time of application each applicant must clearly identify both the fields of testing and the test categories for which accreditation is sought. A copy of the relevant test method documentation and the requisite equipment for the method must be available at the laboratory. A current list of approved methodologies for each parameter/analyte will be

maintained by the department's Louisiana Environmental Laboratory Accreditation Program (LELAP) Unit in the Office of Management and Finance, and a copy of the list will become a part of the application package. In cases where the methodology used by the laboratory is not listed, the laboratory shall submit documentation that will verify that the results obtained from the method in use are equal to or better than those results obtained from the approved methodology. The department will review the data submitted by the laboratory and will notify the laboratory in writing within 60 calendar days if the method is acceptable or unacceptable as an alternate method of analysis.

\* \* \*

[See Prior Text in B-B.1]

2. air pollutants including industrial hygiene and Toxic Organic Compounds (T.O.) methods, stack sampling, and ambient air;

\* \* \*

[See Prior Text in B.3-B.8]

9. asbestos;

10. geo-technical properties of soils including, but not limited to, compaction test, permeability, particle size analysis, soils classification, etc.; and

11. minor conventional parameters - BOD<sub>5</sub>, oil and grease, TSS, pH, fecal and total coliform, and residual chlorine.

\* \* \*

[See Prior Text in C]

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2011.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:919 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:\*\*.

#### **§4707. Fees**

\* \* \*

[See Prior Text in A-E]

F. Travel expenses incurred by representatives of the department, traveling within and outside of the state of Louisiana, conducting an assessment/inspection for the purpose of accreditation shall be reimbursed by the laboratory. These rates shall be in accordance with the Division of Administration state general travel regulations, within the limits established for state employees.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2011.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:920 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

#### **§4711. Proficiency Testing Participation**

\* \* \*

[See Prior Text in A-C]

D. Proficiency testing studies will be available at a minimum of every six months. Laboratories shall participate in two proficiency test studies per year for each field of testing. Failure to meet the minimum semiannual schedule shall be regarded as a failed proficiency test study. Laboratories may set up round robin testing programs under the department's supervision in order to satisfy this requirement, using splits where applicable.

E. Laboratories shall satisfactorily complete two proficiency test studies offered for each test category

accredited within the most recent three proficiency test studies attempted. A year shall be considered as the 12-month period from the first day of July until the last day of June. Results shall be considered satisfactory when they are within the acceptable limits established by the testing agency or the department.

F. Each participating laboratory shall authorize the proficiency test provider to release the results of the proficiency evaluation (PE) test to the Office of Management and Finance, Laboratory Services Division at the same time that they are submitted to the laboratory. Every laboratory that receives test results that are "unacceptable" for a specific analyte must investigate and identify likely causes for these results, resolve any problems, and report such activity to the Office of Management and Finance, Laboratory Services Division along with the submittal of corrective action proficiency sample test results. The laboratory shall report only the analytes for which corrective action was required.

\* \* \*

[See Prior Text in G-J]

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2011.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:922 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:\*\*.

#### **§4717. Repealed**

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2011.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:922 (May 1998), repealed by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

#### **§4719. Implementation**

A. All commercial laboratories analyzing data as of the effective date of these regulations that are directly or indirectly submitting data to the department must submit an application for accreditation as required in LAC 33:I.4701.A.1, including the review fee, by July 1, 2000. The department shall not accept laboratory data generated by laboratories that do not comply with this deadline until such laboratories receive accreditation and fully comply with the requirements of this Section. The department shall not accept environmental data submitted to the department either directly or indirectly until the laboratory has applied for accreditation under these regulations.

B. All laboratories subject to these regulations must receive accreditation from the department, as provided in these regulations, undergo an on-site inspection as specified in LAC 33:I.4701.A.2, and successfully participate in proficiency evaluations as required in LAC 33:I.4701.A.3 by December 31, 2000, or as otherwise agreed to by the department and the applicant, not to exceed one year from December 31, 2000. The department shall not accept data generated by laboratories that do not comply with these deadlines until such laboratories receive accreditation and fully comply with the requirements of this Section.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2011.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:922 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

**Chapter 49. Organization and Personnel Requirements**

**§4901. Laboratory Staff for All Programs Covered by these Regulations**

A. Managerial Staff. The laboratory shall have the managerial staff with the authority and resources needed to discharge their duties. The technical director or his/her designated representative shall be a full-time member of the laboratory staff who has the authority to exercise the day-to-day supervision of the laboratory policies and procedures. The laboratory shall be organized in such a way that confidence in its independence of judgment and integrity is maintained at all times. The laboratory shall specify and document the responsibility, authority, and interrelation of all personnel who manage, perform, or verify work affecting the quality of calibrations and tests. Such documentation shall include:

\* \* \*

[See Prior Text in A.1-H]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:922 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

**Chapter 51. On-Site Inspection/Evaluation**

**§5103. Laboratory Facilities**

A. The laboratory conditions in which the tests are undertaken shall not invalidate the test results or adversely affect the required accuracy of measurement. The laboratory shall have the equipment, adequate storage facilities, procedures to preserve the identity, concentration and stability of samples, and energy sources needed for proper testing. They shall be equipped with devices to monitor essential environmental conditions. Specifically, the testing laboratory shall include the following:

\* \* \*

[See Prior Text in A.1-5]

6. adequate procedures and facilities in place for collection, storage, and disposal of wastes, including expired chemicals, reagents, solutions, standards, and other material with a limited shelf-life;

\* \* \*

[See Prior Text in A.7-C]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:924 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

**Chapter 53. Quality System Requirements**

**§5301. Quality Assurance/Quality Control Requirements**

A. Each laboratory seeking accreditation shall maintain their Quality Assurance/Quality Control (QA/QC) program using appropriate document control practices. The quality assurance manual, analytical methods, and administrative procedures necessary to meet requirements of these regulations shall be reviewed for accuracy and approved for release by the appropriate personnel, distributed, and controlled to ensure the use of the current approved version. Each laboratory seeking accreditation shall:

\* \* \*

[See Prior Text in A.1-C]

1. the structure of the laboratory (organizational charts and generic position descriptions) including relationship between management, technical operations, support services, and quality systems;

\* \* \*

[See Prior Text in C.2-6]

7. references to procedures for the control and maintenance of documents, including document control of laboratory notebooks, instrument logbooks, standards logbooks, and records for data reduction, validation, storage, and reporting;

8. the laboratory's procedures for achieving traceability of measurements to NIST reference materials or other traceable commercial vendors;

\* \* \*

[See Prior Text in C.9-14]

15. references to policy and procedures for the resolution of complaints received from clients or other parties. Records of the complaint and subsequent action shall be maintained;

\* \* \*

[See Prior Text in C.16-17]

18. identification of the laboratory's approved signatories; at a minimum, the title page of the quality assurance manual must have the signed and dated concurrence (with appropriate titles) of all responsible parties, including the quality assurance officer(s), technical director, and the laboratory manager;

19. references to processes/procedures for educating and training personnel in their ethical and legal responsibilities, including potential punishment and penalties for improper, unethical, or illegal actions;

20. references to processes/procedures for establishing that personnel are adequately experienced in the duties they are expected to carry out and/or receive any needed training;

21. references to procedures for reporting analytical results; and

22. a table of contents and applicable lists of references, glossaries, and appendices.

\* \* \*

[See Prior Text in D]

E. The laboratory shall conduct annual internal audits to verify the compliance with the laboratory's quality system. The quality assurance officer shall be responsible for planning and organizing audits. Personnel shall not audit their own activities.

F. Standard operating procedures (SOPs) shall be kept in a manual available to the analyst and the inspector. SOPs may be included as a part or section of the laboratory's quality assurance manual. The laboratory shall have clearly defined, written SOPs or an equivalent, addressing, at a minimum, and as appropriate:

- 1. methods of analysis:
  - a. identification of the test method;
  - b. applicable matrix or matrices;
  - c. detection limit;
  - d. scope and application, including components to be analyzed;
  - e. summary of test method;
  - f. definitions;
  - g. safety;

- h. equipment and supplies;
- i. reagents and standards;
- j. sample collection, preservation, storage, handling, and chain of custody;
- k. quality control;
- l. calibration;
- m. procedure;
- n. calculations;
- o. method performance;
- p. pollution prevention;
- q. data assessment and acceptance criteria for quality control measures;
- r. corrective actions for out-of-control or unacceptable data;
- s. contingencies for handling out-of-control or unacceptable data;
- t. waste management;
- u. references; and
- v. any tables, diagrams, flowcharts, and validation data;

- 2. procurement and inventory procedures;
- 3. preventive maintenance;
- 4. recordkeeping and record storage (archives);
- 5. data reduction, validation, and reporting;
- 6. correcting erroneous reports;
- 7. management of laboratory wastes and hazardous materials; and

8. complaints registered against the laboratory's testing procedures, reporting procedures, and/or other general operating procedures.

G. Supervisory staff shall be responsible for quality assurance/quality control implementation and compliance.

H. The following general quality control principles shall apply, where applicable, to all testing laboratories. The manner in which they are implemented is dependent on the types of tests performed by the laboratory (e.g., chemical, microbiological, radiological). The standards for any given test type shall assure that the following applicable principles are addressed:

1. all laboratories shall have protocols in place to monitor the following quality controls:

- a. adequate controls to monitor tests such as blanks, spikes, or reference toxicants;
- b. adequate tests to define the variability and/or reproducibility of the laboratory results such as duplicates;
- c. measures to ensure the accuracy of the test data, including sufficient calibration and/or continuing calibrations, use of certified reference materials, proficiency test samples, or other measures;
- d. measures to evaluate test performance, such as method detection limits, or range of applicability such as linearity;
- e. selection of appropriate formulae to reduce raw data to final results such as linear regression, internal standards, or statistical packages;
- f. selection and use of reagents and standards of appropriate quality; and
- g. measures to assure constant and consistent test conditions (both instrumental and environmental) where required by the method, such as temperature, humidity, light, or specific instrument conditions;

2. all quality control measures shall be assessed and evaluated on an ongoing basis, and quality control acceptance limits shall be used to determine the validity of the data. The acceptance/rejection criteria shall be updated at a frequency established by the method or by the department's standards;

3. the laboratory shall have procedures for the development of acceptance/rejection criteria where no method or regulatory criteria exists; and

4. the method-specified and/or method-recommended quality control protocols shall be followed. The essential standards shall be used if no protocols are written into the method or if the method protocols are less stringent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:925 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

### §5303. Equipment and Supplies

\* \* \*

[See Prior Text in A-C]

D. Records shall be maintained for each item of equipment and all reference materials significant to the tests performed. Maintenance log book(s) and/or an electronic maintenance database with scheduled backups shall be maintained for all major equipment. Each log shall include:

\* \* \*

[See Prior Text in D.1-6]

7. the details of maintenance, including history of any damage, malfunction, modification, or repair.

\* \* \*

[See Prior Text in E-H.6.b]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:926 (May 1998), repromulgated LR 24:1093 (June 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

### §5311. Quality Assurance for Biomonitoring Laboratories

\* \* \*

[See Prior Text in A-M.2]

N. Reference toxicants such as sodium chloride (NaCl), potassium chloride (KCl), cadmium chloride (CdCl<sub>2</sub>), copper sulfate (CuSO<sub>4</sub>), sodium dodecyl sulfate (CH<sub>3</sub>(CH<sub>2</sub>)OSO<sub>3</sub>Na), and potassium dichromate (K<sub>2</sub>Cr<sub>2</sub>O<sub>7</sub>) are suitable for use by the laboratory. Standard reference materials can be obtained from commercial supply houses or can be prepared in-house using reagent grade chemicals.

\* \* \*

[See Prior Text in O-O.7]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:929 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

### §5315. Records

A. The laboratory shall maintain a record system that shall produce accurate, readily available records that document all laboratory activities. The testing laboratory

shall retain on record all original raw data and observations, calculations and derived data, calibration records, and the final test report in a manner in which the continuity and integrity of the analytical process is preserved. All records shall be maintained for a minimum of 10 years or as required by regulatory or legal requirement. Where computers or automated equipment are used for the capture, processing, manipulation, recording, reporting, storage, or retrieval of test data, the laboratory shall ensure that:

1. computer software is documented and adequate for use;
2. procedures are established and implemented to protect the integrity of data. Such procedures shall include, at a minimum, integrity of data entry or capture, data storage, data transmission, and data processing;
3. computers and automated equipment are maintained to ensure proper functioning and retrieval of data; and
4. procedures are developed and implemented to maintain security of data, including prevention of unauthorized access to, or unauthorized amendment of, computer records.

\* \* \*

[See Prior Text in B-F]

G. The laboratory shall maintain administrative records (e.g., training records) in a manner in which the continuity, integrity, and retrievability processes are preserved.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:931 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

#### **Chapter 57. Maintenance of Accreditation** **§5701. Display of Accreditation Certificate**

\* \* \*

[See Prior Text in A-B]

C. The accredited laboratory shall not misrepresent its state or NELAP accreditation documents. This shall include use in laboratory reports, catalogs, advertising, business solicitations, or proposals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24: 932 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

#### **§5705. Discreditation and Suspension**

\* \* \*

[See Prior Text in A-F.16]

G. If the department discredits/suspends a laboratory, the laboratory shall return the certificate of accreditation to the department within 10 calendar days from receipt of notification of the discreditation or suspension.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:932 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

### **Chapter 59. Accreditation for Laboratories Participating in the NELAP Certification Program**

#### **§5901. Accreditation Process**

A. In-state laboratories participating in the National Environmental Laboratory Accreditation Program (NELAP) shall be certified under standards established by these regulations and those of the NELAP program, as found at <http://134.67.104.12/html/nelac/standards.htm> or by writing NELAP, U.S. Environmental Protection Agency (MD-75A), Research Triangle Park, NC 27711, Attention: NELAP Director, telephone (919) 541-1120. NELAP-certified laboratories shall be required to meet the requirements for reciprocity as set forth in LAC 33:I.4713.

B. The NELAP accreditation process comprises these basic steps:

1. the submittal to the department of a written request from the laboratory in the form of an application provided by the department with the payment of all applicable fees;
2. a review of personnel qualifications;
3. an on-site assessment/evaluation of the laboratory submitting the request/application by authorized representatives of the department with the appropriate laboratory background;
4. the successful participation in the NELAP-approved proficiency evaluations; and
5. a review of the quality assurance/quality control practices, and quality systems in use at the laboratory.

C. When all the requirements for accreditation have been successfully fulfilled, the department shall grant the applicant laboratory a formal notice of accreditation and a certificate of accreditation that lists those fields of testing, methods used by the laboratory, and individual analytes determined by a particular method for which the laboratory is accredited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

#### **§5903. Categories of Accreditation**

A laboratory may apply for accreditation in any one or more of the nine fields of testing and in one or more of the eleven test categories applicable to the field(s) of testing selected. The laboratory shall be accredited in those parameters/analytes within the test category(ies) found in LAC 33:I.4705.B. The laboratory shall be accredited in those parameters/analytes within the test category(ies) for which the laboratory demonstrates acceptable performance on proficiency samples (when available) and meets all other requirements of these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

#### **§5905. Inspections of a Laboratory**

A. As a condition of obtaining and maintaining NELAP accreditation, the laboratory shall permit and facilitate

inspections/assessments by personnel or designated representatives of the department. The specific requirements for an on-site inspection are outlined in LAC 33:I:Chapter 51.

B. Inspectors shall conform to appropriate safety procedures during an on-site inspection. The specific requirements for an inspector are outlined in LAC 33:I.4709.B.

C. A comprehensive on-site inspection/assessment of each accredited laboratory shall be conducted at intervals of not more than two years. The department may make an announced or unannounced inspection or assessment of an accredited laboratory whenever the department, in its discretion, considers such an inspection or assessment necessary to determine the extent of the laboratory's compliance with the conditions of its accreditation and these regulations.

D. The primary accrediting authority shall forward a written report of findings to the laboratory within 30 calendar days from the date of the on-site inspection/assessment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

#### **§5907. Corrective Action Reports in Response to On-Site Inspections**

A. The laboratory shall submit to the department a corrective action plan/report. The plan/report shall include, at a minimum, the action(s) that the laboratory shall implement to correct each deficiency noted in the on-site inspection/assessment report and the time period required to accomplish each corrective action.

1. If the corrective action plan/report is deemed unacceptable, the laboratory shall have an additional 30 days to submit a revised corrective action plan/report.

2. If the corrective action plan/report is deemed unacceptable after the second submittal, the laboratory shall have its accreditation revoked in accordance with section 4.4.3 of the NELAP Standards for all or any portion of its scope of accreditation for any or all fields of testing.

3. If the laboratory fails to implement the corrective actions as stated in their corrective action plan/report, its accreditation shall be revoked.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

#### **§5909. Proficiency Testing Participation**

All laboratories seeking accreditation under NELAP shall participate in the department-approved proficiency testing program as required in LAC 33:I.4711.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

#### **§5911. Accreditation for Out-of-State Laboratories Seeking NELAP Accreditation**

Acceptance of accreditation from another NELAP accrediting authority in that field of testing shall be

determined by the department. The laboratory must comply with these regulations and the standards established by NELAP. NELAP certified laboratories shall be required to meet the requirements for reciprocity as set forth in LAC 33:I.4713.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

#### **§5913. Certification of Compliance Statement**

The Certification of Compliance statement as required in section 4.1.9 of the NELAP standards shall be required. This statement shall be signed by the laboratory manager and the quality assurance officer or other designated person.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

#### **§5915. Accreditation**

A. The period of accreditation shall be one year. To maintain accreditation the laboratory shall meet all requirements of these regulations and the NELAP standards.

B. The department may suspend or discredit a laboratory in any or all of the test categories within the fields of testing for failure to meet the requirements of these regulations and the NELAP standards.

C. The department shall notify the laboratory by registered letter of the suspension or discreditation and the reason for the action.

D. Accreditation shall remain in effect until revoked by the accrediting authority, withdrawn at the written request of the accredited laboratory, or the expiration of the accreditation period.

E. The laboratory may renew accreditation by meeting the requirements outlined in LAC 33:I.5703.

F. Appeals for laboratories that have received discreditation or revocation notices are governed by applicable statutes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

A public hearing will be held on May 25, 2000, at 1:30 p.m. in the Trotter Building, Second Floor, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by OS035. Such comments must be received no later than June 1, 2000, at 4:30 p.m., and should be sent to Patsy Deaville, Regulation Development Section, Box 82178, Baton Rouge, LA 70884-2178 or to fax (225) 765-0486. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Regulation Development Section at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of OS035.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard, West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/planning/regs/index.htm>.

James H. Brent, Ph.D.  
Assistant Secretary

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: Laboratory Accreditation

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule changes should have no fiscal or economic impact. The proposed changes are for clarification of existing requirements established under the regulations.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule changes should not affect the revenue collections of state or local government.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule changes should not affect any person or non-governmental groups. The proposed rule changes are for clarification of existing regulations.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule changes should not affect employment or competition. The proposed rule changes are for clarification of existing regulations.

James H. Brent, Ph.D.  
Assistant Secretary  
0004#057

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Environmental Quality Office of Environmental Assessment Environmental Planning Division

#### Reporting Requirements, Availability of Information, and Public Notice Provisions (LAC 33:III.5107 and 5112)(AQ 202)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air Quality regulations, LAC 33:III.5107 and 5112 (Log #AQ202).

The proposed rule reclassifies zinc and zinc compounds from a Class II TAP (suspected human carcinogen and

known or suspected human reproductive toxin) to Class III TAP (acute and chronic, non-carcinogen toxin). Exposure to zinc and zinc compounds has been shown in EPA toxicological studies to cause acute and chronic health effects corresponding to the Class III TAP classification. Also, the proposed rule corrects a typographical error and adds a certification statement to the requirements for initial and subsequent annual emission reports and revisions to any emission report to attest that the information contained in the report is true, accurate, and complete. The basis and rationale for this proposed rule are to correct the reclassification of zinc and zinc compounds to reflect the true adverse health effects on human population from exposure to zinc and zinc compounds and to make other clarifications to the regulations.

This proposed rule meets an exception listed in R.S. 30:2019(D)(3) and R.S.49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. 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 51. Comprehensive Toxic Air Pollutant Emission Control Program

#### Subchapter A. Applicability, Definitions, and General Provisions

#### §5107. Reporting Requirements, Availability of Information, and Public Notice Provisions

\*\*\*

[See Prior Text in A- A.2]

3. Initial and subsequent annual emission reports and revisions to any emission report shall include a certification statement to attest that the information contained in the emission report is true, accurate, and complete, and signed by a responsible official, as defined in LAC 33:III.502. The certification statement shall include the full name of the responsible official, title, signature, date of signature and phone number of the responsible official. The certification statement shall read,

"I certify, under penalty of perjury, that the emissions data provided is accurate to the best of my knowledge, information, and belief, and I understand that submitting false or misleading information will expose me to prosecution under both state and federal regulations."

\*\*\*

[See Prior Text in B - D.2]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2060 and R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1204 (December 1991), amended LR 18:1363 (December 1992), LR 19:890 (July 1993), amended by the Office of the Secretary, LR 19:1022 (August 1993), repromulgated LR 19:1142 (September 1993), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:58 (January 1997), LR 24:1276 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

§5112. Tables

Table 51.1 Minimum Emission Rates Toxic Air Pollutants			
CLASS I - Known and Probable Human Carcinogens			
Compounds	Cas No.	Synonyms	Minimum Emission Rate (Pounds/Year)
Acrylonitrile	107-13-1		35.0
Arsenic (and compounds) [1][12]	7440-38-2		25.0
[See Prior Text in Asbestos (friable) – Benzene]			
Beryllium (and compounds) [1]	7440-41-7	Glucinum	25.0
[See Prior Text in Bis (2-Chloroethyl) Ether – Cadmium (and compounds) [1] ]			
Chromium VI (and compounds) [1][12]	7440-47-3		25.0
[See Prior Text in 1,2-Dibromoethane – Vinyl Chloride]			

CLASS II - Suspected Human Carcinogens and Known or Suspected Human Reproductive Toxins			
Compounds	Cas No.	Synonyms	Minimum Emission Rate Pounds/Year)
[See Prior Text in Acetaldehyde – Styrene]			
1,1,2,2-Tetrachloroethane	79-34-5	Acetylene tetrachloride	300.0
Tetrachloroethylene	127-18-4	Antisol 1, Carbon dichloride, Perchloroethylene	2,800.0
[See Prior Text in Toluene-2,4-Diisocyanate [8] – Vinylidene Chloride]			
CLASS II - Suspected Human Carcinogens and Known or Suspected Human Reproductive Toxins			
Compounds	Cas No.	Synonyms	Minimum Emission Rate Pounds/Year)
Xylene (mixed isomers) [9]	1330-20-7	ortho-xylene, meta-xylene, para-xylene	20,000.0

CLASS III - Acute and Chronic (Non-Carcinogenic) Toxins			
Compounds	Cas No.	Synonyms	Minimum Emission Rate (Pounds/Year)
[See Prior Text in Acrylic Acid – Vinyl Acetate]			
Zinc (and compounds) [1][12]	7440-66-6		25.0

Explanatory notes:

[See Prior Text in Notes 1-11]

[12] Zinc chromates and zinc arsenates are Class I TAPs regulated as carcinogens under Chromium VI (and compounds) and arsenic (and compounds) TAP categories.

Table 51.2 Louisiana Toxic Air Pollutant Ambient Air Standards				
Compounds	Cas No.	Class	Ambient Air Standard	
			(µg/m <sup>3</sup> *) (8 Hour Avg.)	(µg/m <sup>3</sup> **) (Annual Avg.)
[See Prior Text in Acetaldehyde – Antimony (and compounds) [1]				

Table 51.2 Louisiana Toxic Air Pollutant Ambient Air Standards				
			Ambient Air Standard	
			(µg/m <sup>3</sup> *) (8 Hour Avg.)	(µg/m <sup>3</sup> **) (Annual Avg.)
Arsenic (and compounds)[1] [15]	7440-38-2	I		0.02
[See Prior Text in Asbestos (friable) – Benzene]				
Beryllium (and compounds) [1]	7440-41-7	I		0.04
[See Prior Text in Biphenyl – Chloroprene]				
Chromium VI (and compounds) [1][15]	7440-47-3	I		0.01
[See Prior Text in Copper (and compounds) [1] – Methyl Isobutyl Ketone]				
Methyl Methacrylate	80-62-6	III	9,760.00	
[See Prior Text in Naphthalene (and Methyl-naphthalenes)[12] – Xylene (mixed isomers) [9] ]				
Zinc (and compounds) [1][10][15]	7440-66-6	III	119.00	

Explanatory Notes:

[See Prior Text in Notes \*-14]

[15]Zinc chromates and zinc arsenates are Class I TAPs regulated as carcinogens under Chromium VI (and compounds) and arsenic (and compounds) TAP categories.

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[See Prior Text in Table 51.3 Louisiana Toxic Air Pollutants Supplemental List\* - Table 51.3 Explanatory Note [4]]

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2060 and R.S. 30:2001 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:1331 (December 1995), amended LR 22:278 (April 1996), LR 24:1277 (July 1998), LR 25:1237 (July 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

A public hearing will be held on May 25, 2000, at 1:30 p.m. in the Trotter Building, Second Floor, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by AQ202. Such comments must be received no later than June 1, 2000, at 4:30 p.m., and should be sent to Patsy Deaville, Regulation Development Section, Box 82178, Baton Rouge, LA 70884-2178 or to FAX (225) 765-0486. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Regulation Development Section at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of AQ202.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA

71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard, West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/planning/regs/index.htm>.

James H. Brent, Ph.D.  
Assistant Director

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: Reporting Requirements, Availability of Information, and Public Notice Provisions

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
No implementation costs (savings) to state or local government are anticipated from this proposed rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There is no anticipated effect on local revenue collections. There is a small estimated effect on state revenue collections from this rulemaking. Based on the 1998 zinc emissions, 38 facilities emitted 54.82 tons and were charged \$54/ton. The total fees assessed were \$2,960.28. The newer zinc classification will lower fees to \$27/ton or generate \$1,480.14. A decrease of approximately \$1,500.00 in Environmental Trust Fund revenue is expected.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
Other than the \$1,500 in reduced zinc fees, no other costs and no significant economic benefits to directly affected persons or non-governmental groups are anticipated by this rulemaking.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There are no estimated effects on competition and employment from this rulemaking.

James H. Brent, Ph.D.  
Assistant Secretary  
0004#021

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Environmental Quality Office of Environmental Assessment Environmental Planning Division

Transportation of Radioactive Material  
(LAC 33:XV.Chapter 15)(NE021\*)

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.1503, 1505, 1506, 1508, 1509, 1510, 1511, 1512, 1513, 1514, 1515, 1516, and Appendix A (Log #NE021\*).

This proposed rule is identical to federal regulations found in 60 FR 50264, September 28, 1995, Number 188, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 765-0399 or Box 82178, Baton Rouge, LA 70884-2178. 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 makes changes to packaging and transportation of radioactive material. The proposed rule conforms state regulations with Nuclear Regulatory Commission (NRC) regulations and codifies criteria for packages used to transport plutonium by air. This action is necessary to ensure that state regulations reflect accepted NRC and international standards and comply with current federal legislative requirements. The basis and rationale for this proposed rule are to maintain state compatibility with the NRC.

This proposed rule meets an exception listed in R.S. 30:2019(D)(3) and R.S.49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. 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 15. Transportation of Radioactive Material

##### §1502. Scope

A. Each licensee who transports licensed material outside the site of usage, as specified in the department license, or where transport is on public highways, or who delivers licensed material to a carrier for transport, shall comply with the regulations in this Chapter and the applicable requirements of the U.S. DOT regulations appropriate to the mode of transport of U.S. DOT in 49 CFR parts 170-189.

B. The licensee shall particularly note U.S. DOT regulations in the following areas:

1. packaging 49 CFR part 173, subparts A, B, and I;
2. marking and labeling 49 CFR part 172, subpart D, paragraphs 172.400-172.407, 172.436-172.440, and subpart E.
3. placarding 49 CFR part 172, subpart F, paragraphs 172.500 -172.519, 172.556; and appendices B and C;
4. shipping papers and emergency information 49 CFR part 172, subparts C and G;
5. accident reporting 49 CFR parts 171.15 and 171.16;
6. hazardous material shipper/carrier requirements 49 CFR part 107, subpart G; and
7. hazardous material employee training—49 CFR part 172, subpart H.

C. The licensee shall also note U.S. DOT regulations pertaining to the following modes of transportation:

1. rail - 49 CFR part 174, subparts A - D and K;
2. air - 49 CFR part 175;
3. vessel - 49 CFR part 176, subparts A - F and M; and
4. public highway - 49 CFR part 177 and parts 390 - 397.

D. If U.S. DOT regulations are not applicable to a shipment of licensed material, the licensee shall conform to the standards and requirements of the U.S. DOT specified in Subsection A of this Section to the same extent as if the shipment or transportation were subject to U.S. DOT regulations. A request for modification, waiver, or exemption from those requirements, and any notification

referred to in those requirements, must be filed with, or made to, the Director, Office of Nuclear Material Safety and Safeguards, U.S. NRC, Washington, DC 20555-0001.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104 and 2113.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

### §1503. Definitions

A. As used in this Chapter, the following definitions apply:

$A_1$  the maximum activity of special form radioactive material permitted in a Type A package.

$A_2$  the maximum activity of radioactive material, other than special form, LSA, and SCO material, permitted in a Type A package. These values are either listed in LAC 33:XV.1517, or may be derived in accordance with the procedure prescribed in LAC 33:XV.1517

\* \* \*

[See Prior Text]

*Conveyance*—for transport by public highway or rail, any transport vehicle or large freight container; for transport by water, any vessel, or any hold, compartment, or defined deck area of a vessel, including any transport vehicle on board the vessel; and for transport by aircraft, any aircraft.

*Exclusive Use*—the sole use by a single consignor of a conveyance and for which all initial, intermediate, and final loading and unloading are carried out in accordance with the direction of the consignor or consignee. The consignor and the carrier must ensure that any loading or unloading is performed by personnel having radiological training and resources appropriate for safe handling of the consignment. The consignor must issue specific instructions, in writing, for maintenance of exclusive use shipment controls, and include them with the shipping paper information provided to the carrier by the consignor.

*Fissile Material*—plutonium-238, plutonium-239, plutonium-241, uranium-233, uranium-235, or any combination of these radionuclides. Unirradiated natural uranium and depleted uranium, and natural uranium or depleted uranium that has been irradiated in thermal reactors only are not included in this definition. Certain exclusions from fissile material controls are provided by the U.S. NRC in 10 CFR 71.53.

*Low Specific Activity (LSA) Material* radioactive material with limited specific activity that satisfies the descriptions and limits set forth below. Shielding materials surrounding the LSA material may not be considered in determining the estimated average specific activity of the package contents. LSA material must be in one of three groups:

a. LSA-I:

i. ores containing only naturally occurring radionuclides (e.g., uranium, thorium) and uranium or thorium concentrates of such ores;

ii. solid unirradiated natural uranium, depleted uranium, or natural thorium or their solid or liquid compounds or mixtures;

iii. radioactive material, other than fissile material, for which the  $A_2$  value is unlimited; or

iv. mill tailings, contaminated earth, concrete, rubble, other debris, and activated material in which the radioactive material is essentially uniformly distributed, and the average specific activity does not exceed  $10^{-6}$   $A_2/g$ .

b. LSA-II:

i. water with tritium concentration up to 0.8 TBq/liter (20.0 Ci/liter); or

ii. material in which the radioactive material is distributed throughout, and the average specific activity does not exceed  $10^{-4}$   $A_2/g$  for solids and gases, and  $10^{-5}$   $A_2/g$  for liquids.

c. LSA-III. Solids (e.g., consolidated wastes, activated materials) in which:

i. the radioactive material is distributed throughout a solid or a collection of solid objects or is essentially uniformly distributed in a solid compact binding agent (e. g., concrete, bitumen, ceramic, etc.);

ii. the radioactive material is essentially uniformly distributed throughout a solid or a collection of solid objects or is essentially uniformly distributed in a solid compact binding agent (e.g., concrete, bitumen, ceramic, etc.);

iii. the radioactive material is relatively insoluble, or it is intrinsically contained in a relatively insoluble material, so that, even under loss of packaging, the loss of radioactive material per package by leaching, when placed in water for seven days, would not exceed 0.1  $A_2$ ; and

iv. the average specific activity of the solid does not exceed  $2 \times 10^{-3}$   $A_2/g$ .

*Low Toxicity Alpha Emitters*—natural uranium, depleted uranium, and natural thorium; uranium-235, uranium-238, thorium-232, thorium-228, or thorium-230 when contained in ores or physical or chemical concentrates or tailings; or alpha emitters with a half-life of less than 10 days.

*Maximum Normal Operating Pressure*—the maximum gauge pressure that would develop in the containment system in a period of one year under the heat condition specified by the U.S. NRC regulations in 10 CFR 71.71(c)(1), in the absence of venting, external cooling by an ancillary system, or operational controls during transport.

*Natural Thorium*—thorium with the naturally occurring distribution of thorium isotopes (essentially 100 weight percent thorium-232).

\* \* \*

[See Prior Text]

*Package* the packaging together with its radioactive contents as presented for transport.

a. Fissile material package means a fissile material packaging together with its fissile material contents.

b. Type B package means a Type B packaging together with its radioactive contents. On approval, a Type B package design is designated by the NRC as B(U) unless the package has a maximum normal operating pressure of more than 700 kPa (100 lb/in<sup>2</sup>) gauge or a pressure relief device that would allow the release of radioactive material to the environment under the tests specified in U.S. NRC regulations 10 CFR 71.73, in which case it will receive a designation B(M). B(U) refers to the need for unilateral approval of international shipments; B(M) refers to the need for multilateral approval of international shipments. There is no distinction made in how packages with these designations

may be used in domestic transportation. To determine their distinction for international transportation, see U.S. DOT regulations in 49 CFR part 173. A Type B package approved before September 6, 1983, was designated only as Type B. Limitations on its use are specified in LAC 33:XV.1509.

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[See Prior Text]

*Special Form Radioactive Material* radioactive material that satisfies the following conditions:

a. it is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule;

b. the piece or capsule has at least one dimension not less than 5 millimeters (0.197 inch); and

c. it satisfies the test requirements specified by the U.S. NRC in 10 CFR 71.75. A special form encapsulation designed in accordance with the NRC requirements in 10 CFR 71.4 in effect on June 30, 1983, and constructed prior to July 1, 1985, may continue to be used. A special form encapsulation either designed or constructed after June 30, 1985, must meet requirements of this definition applicable at the time of its design or construction. Any other special form encapsulation must meet the specifications of this definition.

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[See Prior Text]

*Surface Contaminated Object (SCO)*—a solid object that is not itself classed as radioactive material, but which has radioactive material distributed on any of its surfaces. SCOs must be in one of two groups with surface activity not exceeding the following limits:

a. SCO-I. A solid object on which:

i. the non-fixed contamination on the accessible surface averaged over 300 cm<sup>2</sup> (or the area of the surface if less than 300 cm<sup>2</sup>) does not exceed 4 Bq/cm<sup>2</sup> (10<sup>-4</sup> microcurie/cm<sup>2</sup>) for beta and gamma and low toxicity alpha emitters, or 0.4 Bq/cm<sup>2</sup> (10<sup>-5</sup> microcurie/cm<sup>2</sup>) for all other alpha emitters;

ii. the fixed contamination on the accessible surface averaged over 300 cm<sup>2</sup> (or the area of the surface if less than 300 cm<sup>2</sup>) does not exceed 4x10<sup>4</sup>Bq/cm<sup>2</sup> (1.0 microcurie/cm<sup>2</sup>) for beta and gamma and low toxicity alpha emitters, or 4x10<sup>3</sup> Bq/cm<sup>2</sup> (0.1 microcurie/cm<sup>2</sup>) for all other alpha emitters; and

iii. the non-fixed contamination plus the fixed contamination on the inaccessible surface averaged over 300 cm<sup>2</sup> (or the area of the surface if less than 300 cm<sup>2</sup>) does not exceed 4x10<sup>4</sup> Bq/cm<sup>2</sup> (1 microcurie/cm<sup>2</sup>) for beta and gamma and low toxicity alpha emitters, or 4x10<sup>3</sup> Bq/cm<sup>2</sup> (0.1 microcurie/cm<sup>2</sup>) for all other alpha emitters.

b. SCO-II. A solid object on which the limits for SCO-I are exceeded and on which:

i. the non-fixed contamination on the accessible surface averaged over 300 cm<sup>2</sup> (or the area of the surface if less than 300 cm<sup>2</sup>) does not exceed 400 Bq/cm<sup>2</sup> (10<sup>-2</sup> microcurie/cm<sup>2</sup>) for beta and gamma and low toxicity alpha emitters or 40 Bq/cm<sup>2</sup> (10<sup>-3</sup> microcurie/cm<sup>2</sup>) for all other alpha emitters;

ii. the fixed contamination on the accessible surface averaged over 300 cm<sup>2</sup> (or the area of the surface if less than 300 cm<sup>2</sup>) does not exceed 8x10<sup>5</sup> Bq/cm<sup>2</sup> (20

microcuries/cm<sup>2</sup>) for beta and gamma and low toxicity alpha emitters or 8x10<sup>4</sup> Bq/cm<sup>2</sup> (2 microcuries/cm<sup>2</sup>) for all other alpha emitters; and

iii. the non-fixed contamination plus the fixed contamination on the inaccessible surface averaged over 300 cm<sup>2</sup> (or the area of the surface if less than 300 cm<sup>2</sup>) does not exceed 8x10<sup>5</sup> Bq/cm<sup>2</sup> (20 microcuries/cm<sup>2</sup>) for beta and gamma and low toxicity alpha emitters, or 8x10<sup>4</sup> Bq/cm<sup>2</sup> (2 microcuries/cm<sup>2</sup>) for all other alpha emitters.

*Transport Index* the dimensionless number (rounded up to the first decimal place) placed on the label of a package to designate the degree of control to be exercised by the carrier during transportation. The transport index is determined as follows:

a. for non-fissile material packages, the number determined by multiplying the maximum radiation level in millisievert (mSv) per hour at 1 meter (3.3 ft) from the external surface of the package by 100 (equivalent to the maximum radiation level in millirem per hour at 1 meter (3.3 ft)); or

b. for fissile material packages, the number determined by multiplying the maximum radiation level in mSv per hour at one meter (3.3 ft) from the external surface of the package by 100 (equivalent to the maximum radiation level in millirem per hour at one meter (3.3 ft)), or for critical control purposes, the number obtained as described in the U.S. NRC regulations, whichever is larger.

*Type A Quantity* a quantity of radioactive material, the aggregate radioactivity of which does not exceed A<sub>1</sub> for special form radioactive material or A<sub>2</sub> for normal form radioactive material, where A<sub>1</sub> and A<sub>2</sub> are given in LAC 33:XV.1517 or may be determined by procedures described in LAC 33:XV.1517.

*Type B Quantity* a quantity of radioactive material greater than a Type A quantity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104 and 2113

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

### **§1508. General License: NRC Approved Packages**

A. A general license is hereby issued to any licensee of the department to transport, or to deliver to a carrier for transport, licensed material in a package for which a license, certificate of compliance, or other approval has been issued by the department.

B. This general license applies only to a licensee who:

1. has a quality assurance program approved by the department as satisfying the provisions of the U.S. NRC, 10 CFR 71, subpart H;

2. has a copy of the specific license, certificate of compliance, or other approval of the package and has the drawings and other documents referenced in the approval relating to the use and maintenance of the packaging and to the actions to be taken prior to shipment;

3. complies with the terms and conditions of the license, certificate, or other approval, as applicable, and the applicable requirements of this Chapter; and

4. prior to the licensee's first use of the package, has registered with the U.S. NRC.

C. The general license in this Section applies only when the package approval authorizes use of the package under this general license.

D. For a Type B or fissile material package, the design of which was approved by the U. S. NRC before April 1, 1996, the general license is subject to additional restrictions of LAC 33:XV.1509.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104 and 2113

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

#### **§1509. Previously Approved Type B Packages**

A. A Type B package previously approved by the U. S. NRC, but not designated as B(U) or B(M) in the identification number of the NRC Certificate of Compliance, may be used under the general license of LAC 33:XV.1508 with the following additional limitations:

1. fabrication of the packaging was satisfactorily completed by August 31, 1986, as demonstrated by application of its model number in accordance with U.S. NRC regulations;

2. the package may not be used for a shipment to a location outside the United States, except under special arrangement approved by the U.S. DOT in accordance with 49 CFR 173.403; and

3. a serial number that uniquely identifies each packaging that conforms to the approved design is assigned to, and legibly and durably marked on, the outside of each packaging.

B. A Type B(U) package, a Type B(M) package, a LSA material package, or a fissile material package previously approved by the U.S. NRC, but without the designation -85 in the identification number of the U.S. NRC Certificate of Compliance, may be used under the general license of LAC 33:XV.1508 with the following additional conditions:

1. fabrication of the package was satisfactorily completed by April 1, 1999, as demonstrated by application of its model number in accordance with U.S. NRC regulations;

2. a package used for a shipment to a location outside the United States is subject to multilateral approval as defined in U.S. DOT regulations at 49 CFR 173.403; and

3. a serial number that uniquely identifies each packaging that conforms to the approved design is assigned to, and legibly and durably marked on, the outside of each packaging.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104 and 2113

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

#### **§1510. General License: U.S. DOT Specification**

##### **Container**

A. A general license is issued to any licensee of the department to transport, or to deliver to a carrier for transport, licensed material in a specification container for fissile material or for a Type B quantity of radioactive material as specified in the regulations of the U.S. DOT at 49 CFR parts 173 and 178.

B. This general license applies only to a licensee who has a quality assurance program approved by the U.S. NRC as satisfying the provisions of 10 CFR part 71, subchapter H.

C. This general license applies only to a licensee who:  
has a copy of the specification; and

2. complies with the terms and conditions of the specification and the applicable requirements of this Chapter.

D. The general license in Subsection A of this Section is subject to the limitation that the specification container may not be used for a shipment to a location outside the United States, except by multilateral approval, as defined in U.S. DOT regulations at 49 CFR 173.403.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104 and 2113

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26

#### **§1511. General License: Use of Foreign Approved Package**

A. A general license is issued to any licensee of the department to transport, or to deliver to a carrier for transport, licensed material in a package the design of which has been approved in a foreign national competent authority certificate that has been revalidated by the U.S. DOT as meeting the applicable requirements of 49 CFR 171.12.

B. Except as otherwise provided in this Section, the general license applies only to a licensee who has a quality assurance program approved by the U. S. NRC as satisfying the applicable provisions of 10 CFR part 71, subpart H.

C. This general license applies only to shipments made to or from locations outside the United States.

D. This general license applies only to a licensee who:

1. has a copy of the applicable certificate, the revalidation, and the drawings and other documents referenced in the certificate relating to the use and maintenance of the packaging and to the actions to be taken prior to shipment; and

2. complies with the terms and conditions of the certificate and revalidation and with the applicable requirements of this Chapter. With respect to the quality assurance provisions of 10 CFR part 71, subpart H, the licensee is exempt from design, construction, and fabrication considerations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104 and 2113

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

#### **§1512. Routine Determinations**

A. Before the first use of any packaging for the shipment of licensed material, the licensee shall:

1. ascertain that there are no cracks, pinholes, uncontrolled voids, or other defects that could significantly reduce the effectiveness of the packaging;

2. where the maximum normal operating pressure will exceed 35 kPa (5 lbs/in<sup>2</sup>) gauge, test the containment system at an internal pressure at least 50 percent higher than the maximum normal operating pressure, to verify the capability of that system to maintain its structural integrity at that pressure; and

3. conspicuously and durably mark the packaging with its model number, serial number, gross weight, and a package identification number assigned by the U. S. NRC. Before applying the model number, the licensee shall determine that the packaging has been fabricated in accordance with the design approved by the U. S. NRC.

B. Prior to each shipment of licensed material, the licensee shall ensure that the package with its contents satisfies the applicable requirements of this Chapter and of the license. The licensee shall determine that:

1. the package is proper for the contents to be shipped;
2. the package is in unimpaired physical condition except for superficial defects such as marks or dents;
3. each closure device of the packaging, including any required gasket, is properly installed and secured and free of defects;
4. any system for containing liquid is adequately sealed and has adequate space or other specified provision for expansion of the liquid;
5. any pressure relief device is operable and set in accordance with written procedures;
6. the package has been loaded and closed in accordance with written procedures;
7. for fissile material, any moderator or neutron absorber, if required, is present and in proper condition;
8. any structural part of the package that could be used to lift or tie down the package during transport is rendered inoperable for that purpose unless it satisfies design requirements specified by the U.S. NRC in 10 CFR 71.45;
9. the level of non-fixed (removable) radioactive contamination on the external surfaces of each package offered for shipment is as low as reasonably achievable and within the limits specified in U.S. DOT regulations at 49 CFR 173.443;
10. external radiation levels around the package and around the vehicle, if applicable, will not exceed the limits specified by the U. S. NRC in 10 CFR 71.47 at any time during transportation; and
11. accessible package surface temperatures shall not exceed the limits specified by the U. S. NRC in 10 CFR 71.43 at any time during transportation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104 and 2113

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

### **§1513. Air Transport of Plutonium**

A. Notwithstanding the provisions of any general licenses and notwithstanding any exemptions stated directly in this Chapter or included indirectly by citation of U.S. DOT regulations, as may be applicable, the licensee shall assure that plutonium in any form, whether for import, export, or domestic shipment, is not transported by air or delivered to a carrier for air transport unless:

1. the plutonium is contained in a medical device designed for individual human application;
2. the plutonium is contained in a material in which the specific activity is not greater than 0.002 microcuries/gram (74 Bq/g) of material and in which the radioactivity is essentially uniformly distributed;
3. the plutonium is shipped in a single package containing not more than an A<sub>2</sub> quantity of plutonium in any

isotope or form and is shipped in accordance with LAC 33:XV.1502; or

4. the plutonium is shipped in a package specifically authorized for the shipment of plutonium by air in the Certificate of Compliance for that package issued by the U.S. NRC.

B. Nothing in Subsection A of this Section is to be interpreted as removing or diminishing the requirements of U.S. NRC regulations in 10 CFR 73.24.

C. For a shipment of plutonium by air that is subject to Subsection A.4 of this Section, the licensee shall, through special arrangement with the carrier, require compliance with U.S. DOT regulations (49 CFR 175.704) applicable to the air transport of plutonium.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104 and 2113

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

### **§1514. Records**

A. Each licensee shall maintain, for a period of three years after shipment, a record of each shipment of licensed material not exempt under LAC 33:XV.1505, showing, where applicable:

1. identification of the packaging by model number and serial number;

\* \* \*

[See Prior Text in A.2-6]

7. address to which the shipment was made;
8. results of the determinations required by LAC 33:XV.1512 and by the conditions of the package approval; and
9. in addition, for each item of irradiated fissile material:
  - a. identification by model number and serial number;
  - b. irradiation and decay history to the extent appropriate to demonstrate that its nuclear and thermal characteristics comply with license conditions; and
  - c. any abnormal or unusual condition relevant to radiation safety.

B. The licensee shall make available to the department for inspection, upon reasonable notice, all records required by this Chapter. Records are only valid if stamped, initialed, or signed and dated by authorized personnel or otherwise authenticated.

C. The licensee shall maintain sufficient written records to furnish evidence of the quality of packaging. The records to be maintained include results of the determinations required by LAC 33:XV.1512, design, fabrication, and assembly records; results of reviews, inspections, tests, and audits; results of monitoring work performance and materials analyses; and results of maintenance, modification, and repair activities. Inspection, test, and audit records must identify the inspector or data recorder, the type of observation, the results, the acceptability, and the action taken in connection with any deficiencies noted. The records must be retained for three years after the life of the packaging to which they apply.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104 and 2113

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

### **§1515. Reports**

A. The licensee shall report to the department within 30 days:

1. any instance in which there is significant reduction in the effectiveness of any approved Type B or fissile packaging during use;

2. details of any defects with safety significance in Type B or fissile packaging after first use, with the means employed to repair the defects and prevent their recurrence; and

3. instances in which the conditions of approval in the Certificate of Compliance were not observed in making a shipment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104 and 2113

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

### **§1516. Advance Notification of Transport of Nuclear Waste**

\* \* \*

[See Prior Text in A-B.2]

3. the quantity of licensed material in a single package exceeds the least of the following:

a. 3000 times the  $A_1$  value of the radionuclides, as specified in LAC 33:XV.1517, for special form radioactive material;

b. 3000 times the  $A_2$  value of the radionuclides, as specified in LAC 33:XV.1517, for normal form radioactive material; or

c. 1000 TBq (27,000 Ci).

\* \* \*

[See Prior Text in C-C.6]

D. The notification required by LAC 33:XV.1516.A shall be made in writing to the office of each appropriate governor or governor's designee and to the department. A notification delivered by mail must be postmarked at least seven days before the beginning of the seven-day period during which departure of the shipment is estimated to occur. A notification delivered by messenger must reach the office of the governor, or governor's designee, at least four days before the beginning of the seven-day period during which departure of the shipment is estimated to occur. A copy of the notification shall be retained by the licensee for three years.

E. The licensee shall notify each appropriate governor, or governor's designee, and the department of any changes to schedule information provided in accordance with Subsection A of this Section. Such notification shall be by telephone to a responsible individual in the office of the governor, or governor's designee, of the appropriate state or states. The licensee shall maintain for three years a record of the name of the individual contacted.

F. Each licensee who cancels a nuclear waste shipment, for which advance notification has been sent, shall send a

cancellation notice to the governor, or governor's designee, of each appropriate state and to the department. A copy of the notice shall be retained by the licensee for three years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104 and 2113

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

### **§1517. Incorporation by Reference**

The department incorporates by reference 10 CFR part 71, appendix A (July 1, 1999).

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:

### **Appendix A. Repealed.**

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104 and 2113

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), repealed by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

A public hearing will be held on May 25, 2000, at 1:30 p.m. in the Trotter Building, Second Floor, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by NE021\*. Such comments must be received no later than May 25, 2000, at 4:30 p.m., and should be sent to Patsy Deaville, Regulation Development Section, Box 82178, Baton Rouge, LA 70884-2178 or to fax (225) 765-0486. The comment period for this rule ends on the same date as the public hearing. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Regulation Development Section at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of NE021\*.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard, West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/planning/regs/index.htm>.

James H. Brent, Ph.D.  
Assistant Secretary

0004#044

## NOTICE OF INTENT

### Department of Environmental Quality Office of Environmental Assessment Environmental Planning Division

#### Volatile Organic Compounds—Loading (LAC 33:III.2107)(AQ203)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air Quality regulations, LAC 33:III.2107 (Log #AQ203).

Test Methods 18, 25A, 25B, and flaring devices will be added as appropriate test methods for determining compliance with the control requirements for loading facilities for volatile organic compounds. This is part of the State Implementation Plan, which is federally enforceable, and EPA has requested these changes. The basis and rationale for this proposed rule are to implement changes requested by EPA.

This proposed rule meets an exception listed in R.S. 30:2019 (D) (3) and R.S.49:953 (G) (3); therefore, no report regarding environmental/health benefits and social/economic costs is required. 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 21. Control of Emission of Organic Compounds

#### Subchapter A. General

#### §2107. Volatile Organic Compounds—Loading

\* \* \*

[See Prior Text in A – E.1]

2. Test Method 18 (40 CFR part 60, appendix A, as incorporated by reference at LAC 33:III.3003) for determining gaseous organic compounds emissions by gas chromatography;

3. Test Method 25 (40 CFR part 60, appendix A, as incorporated by reference at LAC 33:III.3003) for determining total gaseous non-methane organic emissions as carbon;

4. Test Method 25A or 25B (40 CFR part 60, appendix A, as incorporated by reference at LAC 33:III.3003) for determining total gaseous organic concentration using flame ionization or nondispersive infrared analysis; and

5. Flaring devices which shall be designed and operated according to 40 CFR 60.18.

\* \* \*

[See Prior Text in F]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 16:116 (February 1990), amended by the Office of Air Quality and

Radiation Protection, LR 17:360 (April 1991), LR 22:1212 (December 1996), LR 24:20 (January 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

A public hearing will be held on May 25, 2000, at 1:30 p.m. in the Trotter Building, Second Floor, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by AQ203. Such comments must be received no later than June 1, 2000, at 4:30 p.m., and should be sent to Patsy Deaville, Regulation Development Section, Box 82178, Baton Rouge, LA 70884-2178 or to fax (225) 765-0486. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Regulation Development Section at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of AQ203.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard, West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/planning/regs/index.htm>.

James H. Brent, Ph.D.  
Assistant Secretary

#### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: Volatile Organic Compounds –Loading

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There will be no costs to state or local governmental units for this proposal.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections on state or local governmental units as a result of this rule.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be no costs or economic benefits to persons or non-governmental groups as a result of this rule.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposal will have no effect on competition or employment.

James H. Brent, Ph.D.  
Assistant Secretary  
0004#022

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Office of the Governor Department of Veterans Affairs

Revocation of Bonus Payments (LAC 4:VII.913 and 915)

The Louisiana Department of Veterans Affairs advertises its intent to delete in its entirety LAC 4:VII.913 and 915, pertaining to the Desert Shield/Desert Storm Bonus Payments and World War II Merchant Marine Bonus Payments. This proposed action is being taken because both bonus programs have expired.

#### **Title 4**

#### **ADMINISTRATION**

#### **Part VII. Governors Office**

#### **Chapter 9. Veterans Affairs**

#### **Subchapter A. Veterans Affairs Commission**

#### **§913. Desert Shield/Desert Storm Bonus Payments**

**Repealed**

#### **§915. World War II Merchant Marine Bonus**

**Payments**

**Repealed**

Interested persons are invited to submit inquiries or written comments on the proposed action by 4:30 p.m., May 31, 2000, to David C. Perkins, Deputy Assistant Secretary, Box 94095, Capitol Station, Baton Rouge, LA 70804-9095, or to 1885 Wooddale Blvd., Tenth Floor, Baton Rouge, LA 70806.

David C. Perkins  
Deputy Assistant Secretary

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Revocation of Bonus Payments**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There will be no implementation costs to state or local governmental units if rules are repealed.

#### **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 if rules are repealed.

#### **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 if rules are repealed. The economic benefits to directly affected persons have already been received in the form of cash payments during application period for each bonus.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There will be no effect on competition and employment if rules are repealed.

David C. Perkins  
Deputy Assistant  
Secretary  
0004#069

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Office of the Governor Office of Women's Services

Family Violence Program  
(LAC 4:Chapter 17)

Editor's Note: The text of this Notice of Intent has been codified. Section numbers will be assigned at a later date.

In accordance with the provisions of the Administrative Procedure Act, La. R.S. 49:950 et seq., the Governor's Office of Women's Services proposes to repeal LAC 4:VII.1731-1735 Minimum Standards for Family Violence Programs, and adopt new regulations entitled Governor's Office of Women's Services Quality Assurance Standards for Family Violence Programs.

The Standards apply to all organizations community-based nonprofits that provide services for survivors of family violence and receive funds through the Governor's Office of Women's Services.

#### **Title 4**

#### **ADMINISTRATION**

#### **Part II. Governor's Office**

#### **Chapter 17. Women's Services**

#### **Subchapter B. Family Violence Program Minimum Standards**

#### **Section One: Policy and Governance**

A. Basic Considerations. These standards emphasize the role of the governing body in setting policy, identifying need, developing a strategy to address needs and evaluating the effectiveness and efficiency of the organization. The role of the governing body and the executive director are clearly differentiated; staff do not govern and the governing body does not administer the day-to-day activities. The governing body establishes policies and the staff, at the direction of the executive director, implements programs reflecting those policies. A clear governance structure is in place.

#### **B. Standards**

1. The purpose of the program is clearly stated and compatible with the philosophy of the OWS/LCADV.

2. The program functions in accordance with its stated purpose.

3. The program has a designated governing authority.

4. The governing authority is accountable for the program. It ensures the program's compliance with the Charter and with relevant federal, state and local laws and regulations.

5. Members of the governing authority and any advisory body to the governing authority are chosen in a manner that assures a broad base of knowledge and participation in the governance of the program. There is a rotation mechanism to ensure a balance of new members and seasoned members.

6. The governing authority and any advisory body operate in accordance with acceptable practice.

a. The governing authority designates a person to act as Executive Director and delegates sufficient authority to this person to manage the program. An annual performance evaluation is conducted by the governing authority.

7. The governing authority establishes policies for the efficient and effective operation of the program.

8. The program takes a leadership role in identifying and addressing needs of family violence survivors and their children.

9. The program sets goals and objectives for its management; service delivery; and systems change functions, developing plans to achieve them.

10. The program evaluates the effectiveness and efficiency of its management, service delivery and systems change functions.

11. The program has documentation of its authority to operate under State law. There will be either a charter, partnership agreement, constitution, articles of association, or by-laws.

12. The program has documents identifying the governing body's addresses; their terms of membership; officers; and officers' terms.

13. The program has written minutes of formal meetings of the governing body and by-laws specifying frequency of meetings and quorum requirements.

14. The program informs designated representatives of the Office of Women's Services prior to initiating any substantial changes in the program, services or physical plant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2122B and R.S. 46:2127B1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Women's Services, LR 26:

#### **Section Two: Contract Requirements**

A. Basic Considerations. These standards emphasize legal and contractual issues which the program is required to meet and are identified in the contract. These standards are not inclusive of all the requirements under the contract. It should be noted that the contract contains an over-arching provision which specifies that compliance with the OWS quality assurance standards is required.

##### **B. Standards**

1. The program is legally authorized to contract.

2. The program provides services required in the contract. These services include but are not limited to emergency shelter or referrals, 24-hour hot line; crisis, advocacy, support and group counseling; and support services.

3. The program services comply with the OWS program philosophy.

4. The program does not accept reimbursement from clients unless their grant specifically authorizes them to do so.

5. The program submits accurate and timely reports and budget revisions in the required manner.

6. The program retains books, records or other documents relevant to their contract for five years after final payment.

7. The program obtains an annual audit within six months of ending of fiscal year and submits same to OWS.

8. The program agrees to abide by the requirements of the following as applicable: Title VI and VII of the Civil Rights Act of 1964, as amended by the Equal Opportunity Act of 1972, Federal Executive Order 11246, the Federal Rehabilitation Act of 1973, as amended, the Vietnam Era Veteran's Readjustment Assistance Act of 1974; Title IX of the Education Amendments of 1972; the Age Act of 1972;

and the contractor agrees to abide by the requirements of the Americans with Disabilities Act of 1990.

9. The program acknowledges OWS as a funding agent on its program stationery, written material and when providing information about the program.

10. The program informs applicants or recipients of service of their right to a fair hearing in the event of denial, reduction, or termination of a service or the program's failure to act upon a request for service within a reasonable period of time.

11. The program restricts the use or disclosure of information concerning services, applicants or recipients obtained in connection with the performance of the contract to purposes which provide a benefit to survivors. The survivor is informed of any request for information and signs a voluntary consent before the information is made available.

12. The program does not use funds as direct payment to survivors or dependents.

13. The program imposes no income eligibility standards on individuals receiving assistance.

14. The program has procedures in place to insure confidentiality of records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2122B and R.S. 46:2127B1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Women's Services, LR 26:

#### **Section Three: Social Change**

A. Basic Considerations. These standards address the program's education and advocacy efforts to ensure that survivors, their children, and those at risk of family violence, are protected and treated compassionately. The overall goal is to create an effective response system in the community and to change cultural attitudes and institutional practices that perpetuate violence. It is important to remember, however, that standards can only address the issues for which the organization can be accountable. The program cannot be held accountable for whether a social change occurs. The program can be held accountable for their efforts to educate and advocate in the hope that change will result.

##### **B. Standards**

1. The program identifies those systems and organizations throughout its service area which affect the prevention and treatment of family violence.

2. The program evaluates the practices of those systems and organizations to determine which are harmful or ineffective.

3. The program prioritizes the community systems, organizations and institutions which need to be impacted first and develops a plan which defines strategies to change harmful or ineffective practices, reinforce helpful practices, and intervene where there are no established practices or policies. The plan is adopted by the board on an annual basis and is updated as necessary. The plan could be developed in collaboration with a local coordinating council or task force.

4. The program conducts public education sessions targeted to personnel employed by community systems organizations.

5. The program works collaboratively with those community systems used by family violence survivors which may include establishing safe and independent lives. The goal is to change institutional practices that place survivors at risk.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2122B and R.S. 46:2127B1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Women's Services, LR 26:

#### **Section Four: Foundational**

A. Basic Considerations. These standards address the issues and concerns which apply across all areas of the organization and program implementation. They provide basic guidelines to assure the highest ethical standards with regard to behaviors of staff, volunteers (including Boards of Directors and Advisory Boards), and the guarantee of confidentiality. These standards ensure that informed and skillful assistance is provided to family violence survivors in an empowering, non-victim blaming way, determining the extent of danger and proper ways to prepare for future safety.

#### **B. Standards**

##### **1. Ethics**

a. Family violence programs abide by an accepted code of ethics that ensures excellence in service delivery and professionalism among family violence advocates when working with survivors and representing the program.

b. Programs are equal opportunity employers. No person is discriminated against seeking employment, or while employed, on the basis of age, sex, race, color, disability, national origin, religion, veteran status, marital status, sexual orientation, abuse status (i.e. battered or formerly battered), or parenthood.

c. Program employees do not discriminate in the provision of services or use of volunteers on the basis of any status described above. No program discriminates or retaliates against any employee who exercises her/his rights under any Federal or State anti-discrimination law.

##### **2. Confidentiality**

##### **a. Confidentiality of Facilities**

i. When it is the policy of a family violence program to keep the location of their shelter or other facilities confidential, the program employees and volunteers are prohibited from disclosing information regarding the location of those facilities except in the following specific cases:

(a). to medical, fire, police personnel or agencies, when their presence is necessary to preserve the health and safety of survivors, employees, or volunteers at the facility;

(b). to vendors and others with whom programs have business relationships on a need-to-know basis. The executive director or designee ensures that written agreements are executed by representatives of such businesses pledging to keep the location of the facility confidential;

(c). to any other person when necessary to maintain the safety and health standards in the facility. The executive director or designee may disclose the location of the confidential facility for the purpose of official fire inspections, health department inspections, and other inspections and maintenance activities necessary to assure safe operation of the facility;

(d). to supportive individuals of a shelter resident who have been approved as a part of case management, who have been prescreened by staff, and who have signed an agreement to keep the address and location of the facility confidential. Staff ensures that the individual's presence at

the facility does not violate the confidentiality of other shelter residents at the facility;

(e). confidential, written records of services provided by staff members, and/or volunteers are maintained. These records indicate the types of services provided; the individual or family to whom services were provided, the dates of service provision, the content and outcome of the interaction(s); the staff and/or volunteer providing the service(s); and provisions for future or on-going services.

##### **b. Confidentiality of Survivor Information**

i. Information received by family violence programs about survivors is confidential. Records on survivors are kept in locked files to assure confidentiality. Employees and volunteers are prohibited from disclosing survivor information except in very limited circumstances. Employees and volunteers are prohibited from releasing information about survivors to other employees and volunteers of the same family violence program except in the event of a specific need-to-know. A staff member or volunteer is considered to have a need to know when their work relates directly to the survivor for whom information is available.

ii. Confidential information may be released after a survivor signs a statement authorizing the release. The survivor should be informed about:

(a). to whom the information will be released (name of person or agency);

(b). a date by which the information will be forwarded to the person or entity to whom it will be released;

(c). the purpose for which this information is being released to this person or entity,

(d). the specific information that will be released; and

(e). the right to withdraw permission at any time.

iii. Staff and volunteers report information about any suspected abuse or neglect of a child or dependent adult according to the Louisiana Child & Adult Protection statutes.

(a). Regardless of a person's status as a family violence survivor, staff and volunteers are required to report suspected abuse of a child or dependent adult.

(b). After the filing of a program initiated abuse report, family violence staff must cooperate with the Child or Adult Protective Services regarding the investigation of the abuse report. This includes assisting the protective services staff in gaining access to the survivor and child(ren) in a manner that maintains the confidentiality of the non-reported survivor receiving services from the family violence program. This, however, does not compel the following:

(i). violating the confidentiality of survivor/children who are not named in the abuse report as a victim or perpetrator of the abuse reported;

(ii). releasing information not directly relevant to the reported abuse.

##### **c. Medical Emergency**

i. Program staff and volunteers can release confidential information about a survivor during a medical emergency.

(a). Released information is relevant to the preservation of the health of an adult survivor or such a survivor's minor child in the event the survivor is not able to authorize the release or the survivor cannot be found in a timely manner.

(b). Released information is limited to the medical emergency.

(c). Released information is limited to the medical personnel or institution treating the adult survivor or minor child.

d. Fire Emergency

i. Where a fire exists, information that would otherwise be confidential may be disclosed to fire fighting personnel if such disclosure is necessary to preserve the health and safety of survivors, employees, or volunteers of the family violence program.

(a). Released information is limited to the fire emergency.

(b). Released information is limited to emergency fire and safety personnel treating the adult survivor or minor child.

e. Threats of Harm

i. Any form of firearm or weapon in the facility is prohibited even when locked in a locker at the facility. Program staff will include in their assessment for services appropriate questions to identify those survivors who possess firearms or other weapons and assist them in making arrangements for someone else to keep them while they are receiving services.

ii. Should a survivor pose a risk of harm to self or others, this information can be reported to an appropriate agency/individual. Program personnel will competently assess whether this disclosure is appropriate and necessary. Disclosure of this otherwise confidential information can be made to:

(a). licensed medical or mental health personnel or facilities, law enforcement personnel;

(b). identified, intended victim(s);

(c). the parent(s) of minor children making the threat.

Information released must be limited to that which is directly pertinent to the threatening situation.

f. Violence, Threatened Violence, or Other Crime by Survivor

i. In the event a survivor engages in or threatens to commit a violent act or other crime on the premises of a family violence program facility, such may be reported to law enforcement personnel. Program personnel will competently assess the circumstances and will disclose information only if deemed appropriate and necessary. Released information must be pertinent to the threatening situation.

g. Search and Arrest Warrants Meeting Specific Criteria

i. Family violence program employees and volunteers release otherwise confidential information in specific circumstances:

(a). when law enforcement personnel present a criminal arrest warrant which names the individual and alleges that the individual is located at the program, or its street address;

(b). when law enforcement present a search warrant that specifies the individual or the object of the

search and alleges that the individual or object of the search is located at the program, or its street address.

h. Subpoenas

i. The executive director or designee of each family violence program is the only person authorized to respond to subpoenas for the program, employee, former employee, or volunteer. Should a process server present him/herself at the family violence program, he/she is directed to the administrative offices where the executive director or designee may be found. Identity of the shelter location cannot be confirmed to the process server.

ii. Regardless of what type of subpoena and regardless of whether the subpoena is for an appearance for a deposition or for an appearance at court, the executive director or her designee should advise whoever issued the subpoena of the provisions of the La. R.S. 46:2124.1 which is the privileged communications and records statute for family violence programs.

iii. If a survivor who is residing in the shelter has not given written permission for the program staff or volunteers to acknowledge that she is in fact a resident of that shelter, the person shall advise the process server that the identity of shelter residents is confidential but that in an effort to be of assistance that they:

(a). obtain the name of the person to whom the document is directed;

(b). document the type of subpoena being served, i.e., subpoena for deposition, subpoena duces tecum, subpoena to appear at a court hearing, etc;

(c). obtain the name and telephone number of person requesting the subpoena (attorney, judge);

(d). obtain the date, time, and where to appear;

(e). obtain the name and telephone number of process server; and

(f). refer above information to the survivor (if known) or to the executive director or her designee or other appropriate person as dictated by policy of program.

i. Civil Child Custody Orders, Custody Papers, "Child Pick-up" Orders, Service of Process and Other Law Enforcement Documents.

i. These documents do not in and of themselves present grounds for violation of survivor confidentiality. As described above, any such order or document must be accompanied by a criminal arrest warrant or a search warrant designating the program as the location to be searched and a description of who or what the search is authorized to produce. The executive director or designee is the only person authorized to respond to civil child custody orders, custody papers, "child pick-up" orders, service of process and other law enforcement documents.

j. Involuntary Commitment Orders

i. The statutorily protected privilege of confidentiality belongs to survivors, who have a right to know if legal documents have been issued that are addressed to or about them. Staff does not reveal that a survivor is in shelter or otherwise receiving program services. In the event of the attempted enforcement of a civil involuntary commitment order, staff, while maintaining privilege, makes every attempt to identify the name of the person trying to serve the order and any other relevant information. Staff then notifies the named survivor(s), when possible, of the order and the additional information.

k. Confidentiality Regarding Deceased Persons.

i. Family violence programs maintain confidentiality of records after the person is deceased. Records of the deceased person belong to the family violence program and programs are under no legal obligation to release them. Further, programs have no legal authority to release records unless ordered by a judge or if the deceased person has signed a release prior to her death. If, however, breaching confidentiality would assist in the prosecution of the perpetrator of violence, the executive director or a designee shall seek the counsel of an attorney prior to releasing information.

l. Confidentiality of Minors.

i. Except for the reporting of suspected child abuse and neglect or when a child is assessed to be of danger to her/himself or others, program staff is under no legal obligation to violate the confidence of a child.

m. Religious Activities.

i. Organized religious activities by an outside group or individual or staff within a shelter or non residential domestic violence program are prohibited. Survivor-directed initiatives for religious activities shall not be prohibited but must not take place in common, community shelter or program areas. However, staff who work directly with survivors are encouraged to be aware of the survivor as a whole person. Such staff will include the survivor's spiritual as well as physical, mental and emotional well being as a necessary part of their work with the survivor.

Survivors are not prohibited from considering their rabbi, priest, pastor, shaman, or any other member of an organized religion, as an ally who may visit the survivor under the same guidelines as any other ally.

3. Safety Planning

a. Family violence programs provide 24 hour per day staff to assist survivors of family violence with determining levels of danger/lethality and assist them to develop a personalized plan for safety.

b. Safety planning includes a danger/lethality assessment to determine the survivor's immediate level of danger, completed by trained advocates and documented in case notes or on a standardized form developed for the purpose of danger assessment.

c. Interim assessments are made during the shelter stay or nonresidential service.

d. Assessments screen for stalking and contain planning alternatives for stalking.

e. Safety planning meets the needs of the caller, i.e. a survivor wanting to leave, a survivor intending to stay, survivor with children and pets.

f. Safety planning is a continued process during a shelter stay or advocacy participation, especially at periods of increased risks, i.e. filing of court documents, court hearings, or any strategic move by the survivor or perpetrator.

g. Safety plans are survivor-directed, and staff facilitated/guided.

h. Safety plans are produced in a manner that allows for customization for individuals' specialized needs.

i. Safety planning contains emergency response protocols for use during in-progress emergency and in anticipation of an impending emergency. Minimum steps to assist survivors in determining existing options are provided to plan for the following:

- i. getting help or getting away;
- ii. accessing transportation;
- iii. accessing a linkage to outside helpers;
- iv. protocols for the safety of children and pets;
- v. securing belongings;
- vi. determining a safe, alternative escape location;
- vii. getting assistance from the family violence program.

j. Documentation of Safety Planning includes but is not limited to:

i. a logged note indicating that safety planning was offered during hotline calls;

ii. case notes or a standardized form indicating safety planning was offered during initial residential and outreach intake services;

iii. case notes or a standardized form indicating safety planning was offered on a regular basis and especially during changes in a survivor's plans or in event of a significant occurrence affecting the survivor, survivor's children or the batterer. Examples: the survivor's court appearances, resumption of or beginning new job, an order for visitation of children by the batterer, a batterer being served stay away orders or being released from jail after an arrest involving the survivor and/or children.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2122B and R.S. 46:2127B1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Women's Services, LR 26:

**Section Five: Program Administration and Service Delivery**

A. Basic Considerations. These standards encompass the overall practices and procedures that the program needs to ensure that survivors receive the services they are eligible for, interested in and in need of. Also, that those services are delivered in a manner which is survivor centered, non-judgmental, culturally sensitive and protects the dignity and right to self determination of the survivor. These standards include procedures for documentation of services, incident reporting, and grievance procedures addressing the relationship between philosophy and practice.

B. Standards.

1. General Administration

a. The executive director exercises full responsibility for the day-to day management of the organization.

b. Staff is responsible for implementing policies.

c. The program maintains an internal structure for efficient and effective administration.

d. The service delivery plan fulfills the program's mission.

e. Services are survivor centered, non-judgmental, culturally sensitive and strive to empower persons served.

f. The organization measures the efficiency and effectiveness of its management function.

g. Programs are conducted in accord with applicable professional, ethical and legal principles.

h. Service statistics are maintained and used in accord with acceptable practices.

i. The program identifies the area and population it serves in its brochures and reports.

j. The program recognizes and respects the autonomy, dignity and rights of program participants.

k. Relevant goals, objectives and plans are established for service delivery management.

l. The program seeks to serve persons who need its services and works to eliminate barriers to the provision of quality service to those who seek service.

m. The program provides access to crisis information and shelter 24 hours a day.

n. The program conducts intake services in accordance with acceptable practices.

o. The program conducts orientation for persons to be served. Persons is defined to include adults and children.

p. The program has a system for case management. It regularly plans, monitors and assesses the progress of each person served.

q. The program designs communal living policies which stress non-violence, are fair and survivor centered. Policy enforcement balances the rights of survivors with the need to ensure safety for survivors who choose not to follow policy.

r. The program works collaboratively with other family violence programs throughout the State and in other States as appropriate to meet the safety and security needs of survivors.

## 2. Assessing for Appropriate Services.

a. Within initial contacts with survivors, staff assesses for the following:

i. eligibility for support and intervention services;

ii. immediate safety;

iii. batterer's potential for lethality;

iv. closely analyze batterer dynamics in same sex relationships to assure the person requesting services is the survivor, rather than the perpetrator;

v. special delivery needs based on a disability;

vi. special needs based on the requirements of a person's self-identified religious, cultural, ethnic, geographic or other affiliation(s);

vii. other appropriate services.

## 3. Appointments and Availability of Services

a. Intervention staff, whether shelter or nonresidential, is provided during times when most survivors need to access and receive services.

b. Survivors are informed of the process by which they may gain access, informally and by appointment, to advocates within the program in which they are receiving services.

c. At the time appointments are made, staff assists individual survivors in developing a safety plan, as necessary, for traveling to and from appointments.

## 4. Grievance Policy and Procedures

a. The program develops, and exercises the use of, when appropriate, a written grievance policy to be given to every survivor upon admission to services. The procedures shall include, but not be limited to:

i. procedures to follow in the event a survivor believes they have been denied services;

ii. procedures to follow in the event a survivor is dissatisfied with the quality of services;

iii. procedures to follow in the event a survivor is dissatisfied with behaviors of a staff person.

## 5. Incident Reports

a. The organization provides a written policy to assure serious incidents are properly reconciled. Individual

reports will be written for any injuries, accidents, unusual events or circumstances involving staff, volunteers, visitors, vendors, or survivors. Staff are informed regarding what would constitute each. Provisions are made for evaluation of severity of the incident and any follow-up actions needed.

## 6. Community Relations

a. The program is readily identifiable and visible among its potential users, peer organizations and appropriate publics. Public relations and public education materials are available in other languages for any ethnic group with a presence in the community and the geographic area served and for special needs populations.

b. Policies for community relations and fund development are comprehensive and practical.

c. Relevant goals objectives and plans are established for community relations and fund development

d. Community relations and fund development are conducted in accordance with applicable professional and ethical and legal principles.

e. The program uses designated personnel to implement its policies and procedures for community relations and financial development.

f. The program follows acceptable practices for public disclosure.

g. The program has accurate statistical data relevant to its services readily available.

h. The program conducts a public education program that raises the community's awareness of the causes, implications and the appropriate community response to family violence.

i. The program conducts a public relations program that projects an accurate positive image throughout its service area and raises the community's understanding of and support for its services.

j. The public education and public relations efforts reflect the program's philosophy and that philosophy is consistent with that of the OWS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2122B and R.S. 46:2127B1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Women's Services, LR 26:

### **Section Six: Facility, Safety, Security and Health**

A. Basic Considerations. These standards encompass the overall practices and procedures that the program employs to ensure that the facility and grounds that the program rents or owns are appropriately accessible, functional, attractive, safe and secure for the persons served, visitors, employees and volunteers. They ensure that the program meets legal requirements regarding access, safety and health as well as acceptable standards of cleanliness and functionality.

#### B. Standards

1. All facilities meet ADA standards.

2. Policies for the management of facilities are comprehensive and practical.

3. The program adheres to all applicable zoning, building, fire, health and safety codes and laws of the State and of the community in which the organization is located. Programs are annually monitored by the Office of Public Health and the State Fire Marshall.

4. Relevant goals, objectives and plans are established for building and grounds, safety and health.

5. The program uses designated personnel to implement its policies and procedures relative to facility, safety and health.

6. Comprehensive evaluations are conducted on a regular basis to measure the efficiency and effectiveness of the operations and maintenance of buildings and grounds, safety and health.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2122B and R.S. 46:2127B1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Women's Services, LR 26:

### **Section Seven: Financial Management and Fund Development**

A. Basic Considerations. These standards stress that Generally Accepted Accounting Practices (GAAP) with regular internal and external reports and audits, are the foundation for prudent management of capital, endowment and operating income and expenses. It is the role of the governing body to ensure financial accountability and that the bulk of the program's resources are used to meet service needs.

#### **B. Standards**

1. Policies for financial management are comprehensive and practical.

2. Relevant goals, objectives and plans are established for financial management and long term financial stability.

3. Financial management is conducted in accordance with applicable professional, ethical and legal principles. Generally accepted accounting procedures and practices are implemented as required by the terms of the contract.

4. The program uses or contracts with designated and appropriately qualified personnel to implement its policies and procedures for financial management.

5. The program provides bonding of staff responsible for financial resources. It is recommended that the program provide and maintain adequate liability coverage for the governing body.

6. The program prepares financial statements that clearly and fairly present the organization's financial position.

7. The governing body adopts and the executive director implements comprehensive budgets in accordance with acceptable practices.

8. The governing body continuously reviews and analyzes its financial position.

9. The governing body adopts and regularly reviews salary range schedules and adheres to minimum wage laws.

10. The program prudently manages its operating, endowment and capital funds.

11. The program has sufficient cash flow to meet its operating needs

12. The program maintains adequate cash reserves.

13. The program does not enter into any agreement, written or otherwise, where public funds are paid, or committed to be paid, for services or goods, to any member of the governing body, staff, or members of the immediate family of said governing body or staff, or to any entity in which the foregoing have any direct or indirect financial interest, or in which any of the foregoing serve as an officer or employee, unless the services or goods are provided at a competitive cost or under terms favorable to the program. The program maintains written disclosures of any and all

financial transactions in which a member of the governing body, staff, or their immediate family is involved.

#### **C. Fund Development**

1. The program has a long and short range fund development plan.

2. The program conducts a fund development program which secures sufficient funds to cover its operating and capital needs.

3. The program builds and maintains adequate financial reserves.

4. The governing body initiates and actively supports fund development efforts.

5. The program comprehensively evaluates community relations and fund development programs to measure efficiency and effectiveness.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2122B and R.S. 46:2127B1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Women's Services, LR 26:

### **Section Eight: Staff and Volunteer Management**

A. Basic Considerations. These standards encourage strong professional values. They assume that written policies and consistent practice are the cornerstone of a quality human resource system.

#### **B. Standards**

1. Policies for the management of staff and volunteers are comprehensive and practical.

2. Relevant goals, objectives and plans are established for staff and volunteer administration.

3. The administration of staff and volunteers is in accordance with applicable professional, ethical and legal principles.

4. The program employs sufficient staff and delegates sufficient authority to ensure the responsibilities the program undertakes are adequately carried out.

5. Comprehensive performance evaluations are conducted to measure the efficiency and effectiveness of staff and volunteer administration.

6. The program promulgates personnel policies that attract and retain qualified personnel.

7. A comprehensive manual containing all personnel policies is maintained, kept current, and made available to all staff.

8. The personnel policies provide for hours, leave and benefits that are designed to attract and retain qualified staff.

9. The program establishes written qualifications for all positions and employs persons who meet or exceed those qualifications.

10. Acceptable practices are followed for recruiting, hiring and assigning staff. Responsibility for hiring is clearly defined.

11. A written employee grievance policy is provided.

12. Acceptable screening practices which serve to protect the program and its clientele are clearly defined and followed. Employers, staff, or others responsible for the actions of one or more persons who have been given or have applied to be considered for a position of supervisory or disciplinary authority over children, with the permission of said person, will have a criminal history records check conducted. (R.S. 15:587.1)

13. The program recruits a diverse staff which is reflective of the community and geographic area in which the program is located.

14. Acceptable practices are followed for orientation, development and training of staff. Training content is compatible with OWS and LCADV's statement of philosophy. Forty hours of family-violence related training is required for staff. Sixteen hours of orientation for new staff is required plus 20 hours of training in the first year. Experienced staff accompany new employees at all times and they are not given sole responsibility for working with survivors until orientation is complete.

15. Acceptable practices are followed in supervising and evaluating staff. Clear times of supervision and reporting are established.

16. Acceptable practices are followed in terminating employment of staff. Responsibility for terminating employment is clearly defined

17. A job classification system and salary ranges are maintained to attract and retain qualified personnel.

18. Comprehensive and current job descriptions are available for all staff positions.

19. A comprehensive confidential personnel record is maintained for each staff member.

20. Staff providing direct services are provided opportunities for debriefing to prevent burnout in an on-going forum, such as weekly staffing, maintenance or supervision meetings.

21. The program determines the need for volunteer services and utilizes the services of volunteers as appropriate.

22. The program adopts policies that attract and retain qualified volunteers.

23. A comprehensive volunteer manual containing all volunteer policies and practices is maintained, kept current and made available to volunteers. This manual includes policies and procedures regarding recruitment, screening, training, supervision and/or dismissal of volunteers used to provide both direct and non-direct services. The manual clarifies the roles and contributions of volunteers to the program's provision of service, with specific detail addressing how, when, where and the frequency with which volunteers will be used.

24. Comprehensive and current job descriptions are available for volunteer positions.

25. A comprehensive, confidential personnel record is maintained for each volunteer which includes, but is not limited to a signed confidentiality statement and a record of trainings completed by the volunteer.

26. The volunteer policies provide for hours, benefits and recognition that are designed to attract and retain qualified volunteers.

27. Acceptable practices are followed in recruiting, screening and assigning volunteers. Screening practices serve to protect the program and its clients.

28. Acceptable practices are followed in the orientation and training of volunteers. The organization must provide volunteers with 20 hours of training. Training content is compatible with OWS and LCADV's statements of philosophy.

29. Acceptable practices are followed in the supervision, evaluation and termination of the participation of volunteers.

30. Volunteers are qualified for their responsibilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2122B and R.S. 46:2127B1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Women's Services, LR 26:

#### **Section Nine: Eligibility**

A. Basic Considerations. These standards assure equal provision of services to family violence survivors and their dependents.

B. Standards

1. Persons eligible for the services of family violence programs include, but are not limited to family violence survivors, their legal dependents, and those that are or have been in danger of being emotionally, physically or sexually abused and meet the following criteria:

a. Adults, legally emancipated minors, or minors granted permission for services by a parent, guardian, judge's order or caretakers of eligible persons.

b. In the event of non-emancipated minors seeking services for themselves, programs shall acquire parental permission prior to providing applicable services.

c. Those eligible under the above definition who are/have been abused, or who believe they are in imminent danger of being abused, by their current or former intimate partner.

d. Those eligible above who have no safe place to go.

e. Those eligible above who willingly agree to abide by program guidelines.

f. Those with the ability to take primary care of themselves and their dependents within a communal living facility.

2. Programs provide services regardless of race, religion, color, national origin, gender, age (within above guidelines), mental or physical disability, sexual orientation, citizenship, immigration status, marital status or language spoken.

3. Programs provide services to male survivors who are eligible through collaboration with other organizations.

4. No minor dependent males or females with their parent or guardian are denied access to services on site. Survivors and their dependents may become ineligible if there is evidence that supports a history of violence and the refusal to follow safety guidelines either for themselves or others to cause the environment to become unsafe. Programs may apply to OWS for exemptions because of facility restrictions. Limited exemptions may be given on a case by case basis on presentation of a workable plan.

C. Special Needs and Circumstances

1. Alcohol or drug abuse and addictions: Family violence programs do not withhold services to persons using alcohol or drugs, off the program property, solely based upon the use of the alcohol or substance. Programs provide a written policy demonstrating how repetitive substance/alcohol use, or the demonstration of behaviors incongruent with community living, may affect continued stay in a facility or the limitations of other services available.

2. In cases where survivors require assisted living, eligibility is not withheld, but services made available through coordinated efforts between family violence program staff and other identified service providers.

#### D. Length of Stay (Emergency Shelter/Safe Home)

1. Programs offer safe shelter for a minimum of six weeks. Survivors are informed of the minimum length of stay and any criteria which may impact or shorten this stay.

2. Extensions of length of stay are contingent upon the survivor's progress toward meeting self-identified goals.

3. Reasons for denial of extensions requested by a survivor are documented in the case file and shared with the survivor in sufficient time for her to make other safe arrangements if necessary.

#### E. Repetitive Admissions

1. No program shall place a limit on the number of admissions to shelter without the presence of at least one of the ineligibility criteria.

#### F. Ineligibility

1. In some instances, applicants and current survivors may be denied services. Programs inform survivors seeking residential services of these instances as soon as possible in order for them to make a more enlightened decision about choosing to come to shelter, instead of waiting until intake when they have already risked leaving their abuser.

#### G. Criteria

1. The extent to which these criteria affect the long-term or future eligibility for services must be evaluated and documented on a case-by-case basis.

a. Not an adult or emancipated minor, or granted permission.

b. Active suicidal or homicidal behaviors.

c. Previously been disqualified from services.

2. In the event the program cannot admit new survivors due to capacity, every effort is made to secure and facilitate admission to safe alternate accommodations. This placement may include, but not be limited to hotel/motels, safe homes, LCADV/OWS sister shelters, homeless shelters, or other facilities which can be safely and confidentially provided.

3. If, prior to admission, a person is determined ineligible for shelter services, information and referrals are made for other appropriate services.

4. If, after admission, a person is determined to be ineligible for services, program staff:

a. Refers the person(s) to appropriate services elsewhere.

b. Assists the person(s) with accessing transportation, if possible, to receive the services.

5. Programs maintain written protocols outlining the location(s) and methods by which shelter, advocacy/counseling, and other services are delivered to eligible adult and minor male survivors needing services.

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### **Section Ten: Residential Services**

A. Basic Considerations. These standards assure family violence programs provide appropriate and quality services to survivors of family violence and their children in an empowering, non-blaming way.

#### B. Standards

##### 1. general

a. Family violence shelters provide access, admittance and residence in temporary shelter for survivors

of family violence and their children 24 hours a day, every day of the year.

b. Shift coverage provides on-site staff coverage 24 hours a day, 7 days a week when a survivor is in residence at the shelter and/or when the Hotline is answered at the shelter facility.

c. Regardless of the shift requirements, the first priority of the staff is to be responsive and accessible to a resident or hotline caller.

d. A family violence program provides a back up system for use during emergencies. A supervisor or designee is available "on call" by way of pager or in some manner of contact that allows for immediate response. Each program establishes a protocol that defines criteria and steps for using the back-up system.

e. Family violence programs provide a record of individual and group supervision for shelter employees. Supervision is implemented no less than monthly for part-time employees (20 or less in a week) and biweekly for full time employees. Documentation of supervision for volunteers is recorded and implemented as if they were part time employees.

f. Documentation of staff/volunteer supervision reflects the fact that the supervision took place and a listing of general subject(s) covered in the session is in the personnel or volunteer's file. In the event of problems related to staff performance, documentation is performed according to the program's personnel policies.

g. Procedures for adequate staff communication to provide continuity of service for survivors, including a regular review of any problem areas to resolve, will be developed and implemented.

#### 2. Shelter Services

a. Every survivor is provided:

i. emergency shelter which is structurally safe and accommodates the particular security concerns of family violence survivors. The method of providing this security needs to be documented and this knowledge made available to survivors;

ii. confidentiality of stay at shelter. This is documented in a form and signed by the survivor during intake;

iii. emergency food, clothing, and hygiene items free of charge to adult survivors and their children. When medical services are needed the program helps survivors access services.

b. Advocacy/intervention services, including safety planning for the shelter stay and travel outside the shelter, are available and offered 24 hours a day, every day of the year, with trained advocates on site to provide face-to-face emergency services.

c. Family violence shelters ensure that staff members:

i. have immediate face-to-face contact with a new survivor admitted to shelter to help determine emergency needs, orient them to the shelter facility and procedures;

ii. conduct a formal face-to-face intake process with a new survivor upon admission to shelter and answer any questions the survivor may have. During this time the staff gives the survivor a copy of shelter guidelines and education material on family violence, being very sensitive

to the survivor's ability to read and understand. The staff person doing the intake is trained on discipline guidelines for children in the shelter and how to assist the mother on following these guidelines through appropriate discipline techniques;

iii. sign a written agreement with each survivor about services to be provided by the shelter, which include but are not limited to:

- (a). program services, its staff and volunteers;
- (b). confidentiality agreements, including records;

(c). house guidelines, rights and privacy matters;

d. House guidelines are written in positive and respectful language, including those guidelines posted throughout the House. The purposes of the guideline is for protection, safety or health. Guidelines are limited to the most crucial of situations and reflect the intent to show that the shelter facility is the survivor's home. (OWS with the assistance of LCADV will review program guidelines and offer suggestions.) House guidelines include only those items under the following three categories:

i. Safety: Around confidentiality issues (confidentiality of staff and survivors and program locations, etc.); around security issues (possession of weapons, locked doors, etc.); and around physical safety (threats or acts of violence including discipline of children, etc.)

ii. Group Living: Programs encourage cooperation between survivors in communal living; programs make every reasonable effort to keep a survivor eligible for services regardless of her ability or willingness to participate in daily upkeep of the shelter facility and to adhere to the health and safety guidelines.

iii. Respect for self and others: Demerit and warning systems are not used.

iv. Survivors constitutional right to privacy in their person, property, communications, papers and effects is respected at all times by programs. Survivors are not under any circumstances subjected to unwarranted or unreasonable searches conducted by shelter staff of the survivors person, room, or property. However, circumstances may arise at a shelter where some sort of search may be necessary to protect the health or safety of other survivors or staff.

e. All survivors residing in the shelter for more than 72 hours are provided with an individualized service plan. The survivor plan reflects assistance to survivor's needs. Programs design service plans to facilitate revision in the event circumstances change. This plan includes

- i. release of information agreements;
- ii. an individual or family plan of self-defined goals and actions to address needed services to maintain safety and create self-sufficiency;
- iii. list of guidelines for children in the shelter;
- iv. length of stay policies.

f. A protocol is developed by each program for safe travel of all survivors. All protocols contain a provision for survivor travel to the shelter for intake. Further, the protocol reflects survivors need for local travel whether provided by themselves, the program or public/private carriers.

### 3. Discharge of Survivors

a. Family violence shelters establish a length of stay policy that is flexible and that balances the needs of survivors and the program's ability to meet those needs. Length of stay policy cannot be shorter than 6 weeks.

b. Shelters document the attempt to provide an exit interview with each survivor prior to their departure. Minimum categories of exit interview include, but are not limited to, an assessment of program services, treatment by staff (respectful, helpful, available), knowledge of staff in the areas of dynamics of family violence, children's services, safety planning, and goal planning. This is to be completed by survivor through use of a survivor friendly survey. The exit interview provides for a revision of the survivor's safety plan (inclusive of children's safety issues) and linkage to outreach and/or follow up services provided by the program and other community resources. These items are listed in detail on an exit interview form. The exit interview survey and form must be approved by OWS and LCADV.

c. Involuntary Discharge: Shelters must make every effort to work with a survivor in order for them to remain in shelter, except for situations which compromise the safety of others such as

- i. the use of violence or threats of violence;
- ii. the use of behavior that repeatedly disrupts the ability of other survivors/children to receive safe and effective services;
- iii. possession of illegal substances;
- iv. possession of firearms, stun-guns, knives or any other weapon that may be used or by accident to threaten a life;
- v. active suicidal or homicidal behaviors;
- vi. violating the confidentiality of another resident.

d. An individual service plan/contract is developed with the survivor and appropriate documentation placed in the survivor's file which demonstrates attempts to assist the survivor and/or her children with problematic/disruptive behaviors.

i. Example A: A survivor is drinking alcohol and returning to the shelter intoxicated. Once sobriety is established, the program staff addresses this problem with the survivor and offer to develop a contract or service plan regarding this situation, such as requiring the survivor to attend AA meetings and assisting the survivor to those meetings. If the contract is not followed or the situation reoccurs, then steps to find other resources for the survivor are offered. If this is not accepted, the survivor may be asked to leave. The contract and service plan are documented in survivor's file to reflect the process of offering assistance.

ii. Example B: A survivor's child's behavior is repeatedly disruptive or destructive. A worker addresses this problem with the survivor/parent and offers suggestions to remedy this by developing a plan which may include alternate resources such as a parental support group or referrals to other appropriate child service providers in the community.

e. Survivors may be asked to leave under the following circumstances: credible threats to others, with intent to harm; unresolved disruptive or abusive behavior; or if the safety of the shelter is compromised by their continued presence.

#### 4. Re-entry

a. Shelters do not discriminate against a survivor by limiting the number of times of re-entry or by requiring a time limit between re-entry. Programs do not maintain a "no re-admit" list; however it is permissible to "not admit at this time" if a survivor is not currently appropriate. This information is documented in survivor's file. Reentry status reflects the survivor's need and behaviors at the current time and is not based on past situations.

### **Section Eleven: Intervention Services**

A. Basic Considerations. These standards assure quality intervention services provided within family violence programs.

#### B. Standards

##### 1. General

a. The first priority of the staff is immediate response and accessibility for a hotline caller.

b. A family violence program provides a back up system for use during emergencies. A supervisor or designee is available "on call" by way of pager or in some manner of contact that allows for immediate response. Each program establishes a protocol that defines criteria and steps for using the back-up system.

c. Family violence programs keep a record of individual and group supervision for shelter employees. Supervision is implemented no less than monthly for part-time employees (20 or less in a week) and biweekly for full time employees. Documentation of supervision for volunteers is recorded and implemented as if they were part time employees.

d. Documentation of staff/volunteer supervision reflects the fact that the supervision took place and a listing of general subject(s) covered in the session in the personnel or volunteer's file. In the event of problems related to staff performance, documentation is performed according to the program's personnel policies.

e. A protocol is developed by each program for safe travel of survivors. Protocols contain a provision for survivor travel to the shelter for intake. Further, the protocol reflects survivors need for local travel whether provided by themselves, the program or public/private carriers.

f. Programs document the attempt to provide an exit interview with each survivor prior to their departure. Minimum categories of exit interview include, but are not limited to, an assessment of programs, services, treatment by staff (respectful, helpful, available), knowledge of staff in the areas of dynamics of family violence, children's services, safety planning, and goal planning. This is completed by the survivor through use of a survivor friendly survey. The exit interview provides for a revision of the survivor's safety plan (inclusive of children's safety issues) and linkage to outreach and/or follow up services provided by the family violence program and other community resources. These items are listed in detail on an exit interview form. The exit interview survey and form is approved by OWS and LCADV.

g. Advocacy, case management and counseling services of family violence programs are empowerment-

based and survivor directed. Empowerment-based intervention refers to survivor-directed interventions or services in which the survivor or recipient of services receives the support and assistance of trained staff who provide safety planning, assistance with meeting physical and emotional needs, education regarding the dynamics of domestic violence and living skills based on a case by case assessment. Empowerment also means allowing the survivor to make her own life choices within the basic eligibility guidelines of the program without coercion or threat of loss of services provided by the program.

h. Participation in intervention services shall be voluntary.

##### i. Methodology

i. Intervention services are provided in a manner best suited for individual survivors.

ii. The methods selected is provided only with approval of survivors.

iii. Family violence shelters/nonresidential services and outreach services include individual and group intervention services.

iv. Sessions are provided, as appropriate, to individual survivors.

v. Shelter residents are notified in writing that they have at least one hour per day, five days per week of individual sessions available to them at their request. Such sessions are provided by staff trained in techniques of individual, one-on-one intervention and focus on issues of safety planning for the survivor and dependents, physical and emotional needs assessment, planning for meeting those needs, education on the dynamics of family violence and knowledge of community resources with phone numbers provided and available for survivors and children.

vi. Group sessions for survivors and their dependents (separately) are provided, as appropriate, no less than once a week.

vii. Shelters provide developmentally appropriate, multi-age play groups for children on a daily basis during the week. Child care is provided during the parent's initial intake and individual and group sessions if play groups are not available during that time

##### j. Restricted Methods

i. Couples counseling, in any form, is not provided by family violence programs.

ii. Family counseling that includes the presence of an alleged batterer is not provided by a family violence program.

iii. Mediation services are not provided or accommodated by family violence programs.

iv. Batterer Intervention Services are not allowed to take place on or near the premises of the family violence program. Furthermore, individual staff is not allowed to work with both survivors and batterers. Job descriptions for individual family violence program staff working with survivors and their dependents do not include work with the abusers. No staff whose responsibility it is to provide direct services to survivors, or to supervise or direct programs for survivors, is allowed to participate in or lead batterer intervention program services. These two programs remain entirely separate so that it is apparent to survivors that there is no conflict of interest within the program or staff. This does not, however, preclude staff from overseeing, for the

purposes of holding accountable, batterer intervention program services.

k. Types of Intervention Services

i. Advocacy is defined as the performance of direct intervention in behalf of and with the permission of survivors, to further goals and objectives initiated by the survivor.

(a). Advocacy contacts addressed to individuals or groups not directly employed by the family violence program are not initiated without the survivor's direct permission. Proof of permission is provided by program staff by the recording of such on an approved Release of Confidential Information Form.

(b). Advocates provide only information necessary to achieve the goal of each individual advocacy contact.

ii. Counseling is defined as any individual or group interaction facilitated by program staff for the purpose of addressing emotional needs of adult or child users of services.

- (a). Crisis counseling
- (b). Peer counseling
- (c). Supportive counseling
- (d). Educational counseling

iii. Case Management is defined as any individual or group interaction facilitated by program staff for the purpose of assisting survivors with assessing needs, setting priorities, goal setting, implementing objectives, locating resources, or performing any activities pertaining to the accomplishment of goals. Case management is based upon survivor-identified goals and not a standardized or 'cookie cutter' formula. Case management shall reflect, at least the following:

- (a). Identify and prioritize survivor's needs, including safety planning.
- (b). Identify resources available to survivors.
- (c). Develop goals and objectives specific to the survivors' own goals and record these in a program-approved service plan.
- (d). Staff internal and external referrals to assist in goal/objective achievement.
- (e). Correlation with survivor's length of stay, if in a shelter.
- (f). Progression toward completion of survivor's goals and objectives.
- (g). Adaptation to survivor's changing needs, as appropriate.

1. Provision of Services

i. Each survivor in a shelter will be assigned a resident -advocate/counselor. This staff person is available to meet with the survivor daily, Monday through Friday. Daily face-to-face interaction with the survivor is made available to her in order to check on her safety and other needs and to offer to schedule a meeting time. If the survivor works, the survivor's advocate/counselor may contact survivor via telephone or visiting at workplace if this is desirable and chosen by the survivor.

ii. In the event that an advocate/counselor is sick or on vacation, it is that advocate/counselor's responsibility to make sure that another staff member meets with the survivor on that day. This is documented in the survivor's file.

iii. Empowerment advocacy does not mean the advocate/counselor sits and waits for the survivor to come to her office. Many time survivors of family violence need assistance to ask for the things they need and need to have this modeled for them. This is the advocate/counselor's responsibility to daily offer and model empowerment to survivors.

m. Appointments and availability of services

i. Intervention staff, whether shelter or nonresidential, is provided during times when most survivors need to access and receive services. Survivors are informed of the process by which they may gain access, informally and by appointment, to advocates within the program in which they are receiving services.

ii. At the time appointments are made, staff assists individual survivors in developing a safety plan, as necessary, for traveling to and from appointments.

2. Documentation

a. Documentation for Advocacy, Counseling & Case Management contains at least:

- i. Demographic data,
- ii. Lethality assessment;
- iii. History of Abuse;
- iv. Safety Plan;
- v. Description of the abuser;
- vi. Individualized Service Plan;
- vii. Children's assessment (if children in the family);

viii. Notification of Exceptions to Confidentiality, advising survivors of advocate's duty to release confidential information in the following circumstances:

- (a). report child abuse
- (b). protect against danger to self or others
- (c). summon emergency services
- (d). maintenance of safety and health standards of shelter facilities

ix. Release of Liability form;

x. Informed Consent to Release Confidential Information form(s);

xi. Exit Interview

b. Documentation for Advocacy contains at least (A) Demographic data and appropriate releases of information as needed; and (B) Document dates of advocacy and contact.

c. Documentation for Case Notes reflects the following:

- i. Notes are entered in chronological order;
- ii. Notes have full signature of advocate/counselor;
- iii. Entries are made immediately after all survivor contact;
- iv. White-out is not used;
- v. Only necessary facts are recorded;
- vi. Notes do not contain any diagnosis or clinical assessments;
- vii. Notes on one survivor do not include other survivor names;
- viii. Errors are corrected by drawing one line through it, write "error" and
- ix. initial; then continue with note.

### 3. Computer Generated Case Notes

a. In the event of the use of computer-generated case notes or survivor records, it is the responsibility of each family violence program to assure confidentiality of information. Each program must maintain a written policy and accompanying procedures that reflect security measures. These contain, but are not necessarily limited to:

i. A generalized policy stating the responsibility of all staff and volunteers to assure survivor confidentiality.

ii. A standardized protocol for creating and securing computerized survivor data on all computers including portable laptops.

(a). Stating which data entries are allowable and those which are not.

(b). Outlining use and storage of disks.

(c). Outlining the uses and protection of hard-drive storage (including protocols for use of passwords).

(d). Outlining the use and methods of network systems storage.

(e). Outlining protocols for the creation, routing and storage of hardcopy materials generated from computer-based records. Further, programs provide the following:

(i). access to computerized confidential records is protected by the use of appropriate software and passwords;

(ii). protocols for timely download or deletion of survivor-related information is provided when computers are shared without use of passwords;

(iii). in the event a protocol includes use of a computer's recycle bin, staff are required to delete the information from the recycle bin as a final step in the process of deleting confidential files.

### 4. Support Groups

a. Interactive group sessions are topic oriented, or informational and educational, and conducted in a process that is survivor-directed, and facilitated by qualified trained program staff/volunteers.

b. Family violence programs highly recommend that the adult survivors attend a minimum of three support groups while residing in a shelter or when being seen individually in non-resident advocacy. The unwillingness for this to occur by the survivor may not be used as a reason to remove survivors from programs. Also, children of adult survivors may not be restricted from attending children's group if the mother refuses support group, although the mother may be required to remain at the program while her child is in group.

c. Family violence programs provide at least one weekly group for adult survivors while providing at the same time, a multi-age play group for the children of the adult survivors. If the children's group is not always possible, then at the very minimum, appropriate child care is provided during the adult survivor's group.

d. Support group attendance is documented in each survivor's file to include, date of group, topic of discussion, any factual information pertinent to the survivor and signed by the group facilitator.

e. Family violence shelters are encouraged to provide support groups to residents and non-residents, including former residents.

f. Support group services provide understanding and support, which includes, but is not limited to:

i. active and reflective listening;

ii. addressing the needs identified by those attending group session;

iii. building self-esteem;

iv. problem solving;

v. recognition that survivors are responsible for their own life decisions and that batterers are responsible for their violent behavior.

g. Support group services provide education and information that includes, but is not limited to:

i. how batterers maintain control and dominance;

ii. the role of society in perpetuating violence against women;

iii. the need to hold batterers accountable for their actions;

iv. the social change necessary to eliminate violence against women, including discrimination based on race, gender, sexual orientation, disabilities, economic or educational status, religion or national origin.

### 5. Court/Legal Advocacy

a. Family violence programs providing court advocacy assist survivors in receiving self-identified interventions and actions sought from the civil and/or criminal justice systems.

b. Court advocacy is provided by qualified, trained staff members or volunteers.

c. Family violence programs providing court advocacy services:

i. assure that appropriate staff and volunteers have a working knowledge of current Louisiana laws pertaining to family violence, as well as the local justice system's response to family violence, including court rules, in each parish services are provided.

ii. strictly monitor and prohibit staff members and volunteers from practicing law or providing legal representation if they are not properly certified to engage in such a legal practice.

iii. maintain a current list of local criminal and civil justice agencies and contact persons in each parish where services are provided.

iv. maintain a current referral list of local attorneys, including pro bono resources, who are sensitive and familiar with legal issues and orders of protection, for representation in civil and criminal cases, with contact person identified in each parish where services are provided.

v. train and offer assistance to the criminal and civil justice system within the parishes served, in order to build a working relationship and institute a law enforcement protocol involving family violence.

d. Family violence programs that provide court advocacy services provide the services in shelter and nonresidential settings.

e. Court advocates are responsible for documenting services provided and the outcome of those services in each survivor's file. If volunteers provide services, court advocates obtain the necessary information and document.

### 6. Children's Services

a. Programs have on staff a child advocate/counselor who is trained in a minimum of the following areas:

i. the developmental stages of childhood, including physical, social, cognitive, and emotional stages;

ii. developmentally appropriate process;  
iii. a working knowledge of family violence and its effects on children (including the ways that mothers are often revictimized by the child welfare and educational system, etc.);

- iv. assertive discipline techniques,
- v. non-violent conflict resolution,
- vi. the warning signs of child abuse,
- vii. appropriate methods for interviewing children

who have disclosed abuse,

viii. how the child welfare system works and their role as "mandated reporters".

b. Child Services include but are not limited to:

i. at shelters, child advocates conduct a child intake interview with the mother of the child(ren) within 48 hours of shelter arrival. Nonresidential programs conduct a child intake as soon as possible after the survivor's initial contact with the program. Intake forms are completed by the mother. Intake forms include areas of concern the mother has for each child, physical needs of the child, social or educational needs of the child, education level of the child, any learning disabilities or diagnoses, medications the child is on and what they are for, any child abuse suspected or documented, type of discipline used in the home and its effectiveness, check list for problem areas, such as, weight, eating, sleeping, hygiene, motor skills, language skills, bedwetting, handling conflict, relationship with adults and with other children.

ii. at the intake interview, the child advocate discusses child guidelines in detail, including discipline guidelines, offers help and guidance in following the guidelines, discusses child services offered. This information is documented in the survivor's record. If programs offer booklets giving this information, they can be given in addition to the required face-to-face interview with the mother.

iii. child advocates provide a physical and social assessment of each child within the first 72 hours of shelter and make appropriate referrals and appointments to meet the areas of need. In nonresidential programs the assessment follows the initial intake.

iv. child advocates have a face-to-face meeting with each child or sibling group within 48 hours of shelter following the child intake interview. In this meeting the child advocate introduces herself, lets the child(ren) know she is there to help them in any way she can, provides a tour of the shelter, talks about the guidelines of the shelter, and the discipline guidelines. Some programs may provide shelter books which cover this material, but this does not replace the face-to-face meeting with the child(ren).

v. child advocates and trained volunteers conduct a daily (M-F) 2 hour playgroup for children from the ages of 3-11. In nonresidential programs playgroups are held at the time that survivors are in support groups. This playgroup is a time to allow children to play in a safe, structured environment. The playgroup is to be based on a developmentally-appropriate philosophy. While the playgroup is planned and facilitated by the child advocate, the child directs her/his own progress in the group. This is to empower the child, offering the child a safe and appropriate place to say "no" and to learn consistency, structure, and non-violent conflict resolution.

vi. goals of the playgroup are: breaking the "conspiracy of silence", how to protect oneself, to have a positive experience, strengthening self-esteem and self-image.

vii. each child with the assistance of the child advocate develops a personalized safety plan. The plan addresses living at the shelter and also if the mother returns to the perpetrator. Both safety plans are done as soon as possible because no one knows when the mother may return. This is documented in the mother's file.

viii. child advocates may conduct a weekly education group for the mothers, including education on developmental stages and discipline techniques. Group attendance and topic to be discussed are documented in each survivor's file.

ix. child advocates are available to meet with each mother at least once a week in an individual session. This is a time when mothers can share problems they are having and get assistance with the solutions. Methods of parenting education are respectful and non-victim blaming of the adult survivor.

x. if at all possible, each child or sibling group is given an exit interview. In this interview child(ren) can assess child services and staff in some type of developmentally appropriate way. Safety planning and discussion of transition period are discussed. Exit interview is documented in survivor's file.

#### 7. Crisis Line or Hotline

a. Family violence programs operate a 24-hour a day seven day a week crisis line answered by a qualified trained staff or volunteer.

b. Hotline numbers are listed in the local telephone book and widely distributed in areas served by the FV program.

c. Hotlines are answered using the name of the family violence program.

d. Hotlines are answered by trained staff or volunteers of the programs. The use of commercial or mechanical answering services is prohibited. Volunteers are not allowed to make final determinations about shelter eligibility.

e. Programs have a minimum of two telephone lines, one of which is the designated hotline.

f. Hotlines have call block, to safe guard against caller ID and \*69 services. Local telephone companies can assist with needed information and services.

g. When holding/transferring calls

i. Staff completes initial assessment as to immediate danger before putting caller on hold.

ii. Callers on hold are checked back with within two minutes.

iii. Prioritize calls through safety and lethality assessment.

h. Staff/volunteers answering hotline calls are in a place that is quiet, free of distractions, and confidential; a private office if possible.

i. If a professional, or third party, calls on behalf of a survivor of family violence generalized information may be given about family violence and program services and requirements, but the staff person or volunteer must talk directly with the survivor regarding a personalized safety

plan, danger/lethality assessment and shelter, or other services, and eligibility.

- j. Hotline services include, but are not limited to:
  - i. crisis intervention,
  - ii. assessment of caller's safety and needs,
  - iii. emergency protocols (i.e. calling 911; is batterer present or within hearing)
  - iv. lethality/danger assessment,
  - v. FV education,
  - vi. information or referrals to available community resources,
  - vii. an appropriate form documenting each hotline call, the services offered and/or referrals made, and a plan of action, including information received in calls from professionals or third parties.

- k. When using administrative and outreach phones:
  - i. anyone answering the telephone has a working knowledge of how to screen and assist hotline callers and the requirements of the crisis line, i.e. restrictions about being placed on hold, etc.

- ii. after-hours, weekends and holidays, administrative and outreach phones are answered by devices that clearly direct callers to the hotline.

- l. Prior to receiving calls, hotline staff complete family violence training approved by OWS and LCADV.

- m. If either party is using a cell or mobile phone, the caller is made aware that confidentiality cannot be guaranteed. Family violence programs do not use mobile remote phones for crisis lines because of confidentiality. This does not preclude digital phones that are confidential.

- n. If call forwarding is used to assure staffing of the service, it is the responsibility of the program staff to assure safety and confidentiality. Some issues to be addressed through written protocols when calls are forwarded to non-program locations:

- i. the potential for family member to answer or pick-up (by way of an extension line) a hotline call.

- ii. the potential of a personal answering machine to pick-up on an incoming call.

- iii. the potential for calls to be routed to a cellular telephone that is answered by an advocate/volunteer in public place.

- iv. the potential of staff's/volunteer's personal telephone lines to be traced or identified through "caller ID" or other features.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2122B and R.S. 46:2127B1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Women's Services, LR 26:

### **Section Twelve: Transitional Living/HOUSING Program**

A. Basic Considerations. These standards assure family violence programs offering transitional living/housing as part of their service delivery plan provide appropriate and quality services to survivors of family violence and their children in an empowering, non blaming way. Service provided through the transitional living/housing program is not an activity but a process that involves the survivor in goal setting, case management, needs assessment, resource identification and staff/survivor interaction.

#### **B. Standards**

1. Persons eligible for transitional living/housing are survivors of family violence who have some affiliation with

the family violence program providing housing either in a residential or non-residential capacity, have left an abusive relationship and meet the following criteria.

- a. The resident has a willingness to work or enroll in a continuing education or job training/readiness program.

- b. The resident agrees to a criminal history check to ensure that there are no pending legal issues that pose a threat to the other residents.

2. Programs offering transitional living/housing develop and implement formal screening procedures that include the following:

- a. application process;

- b. screening process:

- i. direct service staff approval;

- ii. administrative approval;

- c. verification process (Verification of status should be given to applicant in writing);

- i. accepted/ready for housing;

- ii. accepted/added to waiting list;

- iii. conditional acceptance (to include explanation);

- iv. denied.

3. Programs offering transitional living/housing establish rental agreements with eligible survivors entering the program to include the following:

- a. written agreement for transitional living/housing;

- b. deposits (when applicable);

- c. move in date;

- d. guidelines for housing and transitional living;

- e. visual inspection and inventory (if applicable) of housing site.

4. The grievance procedure reflects OWS Standards and individual program policy. Grievance procedures are provided, in writing, to each resident.

5. Programs provide comprehensive supportive service/case management that is survivor directed and includes appropriate referrals to alternate resources, safe living arrangements, safety planning, child care, children's activities, individual and group/support counseling, assistance with housing and public assistance programs, legal advocacy, life skill development and staff/survivor interaction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2122B and R.S. 46:2127B1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Women's Services, LR 26:

All interested persons may submit written or oral comments on the proposed rule through May 19, 2000 to Vera Clay, Executive Director, Governor's Office of Women's Services, P.O. Box 94095, Baton Rouge, Louisiana 70804-9095.

#### **Family Impact Statement**

The proposed Standards should not have any known or foreseeable impact on any family as defined by R.S. 49:972D or on family formation, stability and autonomy. Specifically, there should be no known or foreseeable effect on:

- 1. the stability of the family;

- 2. the authority and rights of parents regarding the education and supervision of their children;

- 3. the functioning of the family;

- 4. family earnings and family budget;

5. the behavior and personal responsibility of children;

6. the ability of the family or a local government to perform the function as contained in the proposed rule.

Vera Clay  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Family Violence Program**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The Standards were published at a cost of \$387.15. (Federal Funds) It is expected that costs for 2000-2001 and 2001-2002 will increase modestly to implement the project. (Funds will be Federal ) The workload for the project is being absorbed by the current staff.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There is no effect on state or local governmental revenue collections.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

There are no costs to any affected persons or non-governmental groups. Family Violence survivors and their children will benefit from high quality services provided in compliance with the Standards.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There are no effects on competition and employment.

Vera Clay  
Executive Director  
0004#015

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Board of Nursing**

Criminal History Record Information  
(LAC 46:XLVII.3330)

Notice is hereby given, in accordance with the provisions of the Administrative Procedures 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. 37:919 intends to adopt rules amending the Professional and Occupational Standards pertaining to the criminal history record information. The proposed amendments of the rules are set forth below.

**Title 46  
PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XLVII. Nurses**

**Subpart 2. Registered Nurses**

**Chapter 33. General**

**§3330. Criminal History Record Information**

A. Authority of the Louisiana State Board of Nursing (Board). The board derives its authority to obtain criminal history record information from R.S. 37:920.1.

B. The following applicants for licensure or permission to enroll in clinical nursing courses shall submit to a criminal history record information check:

1. registered nurse by examination;

2. registered nurse by endorsement;

3. advanced practice registered nurse, if records not checked in relation to the RN license reinstatement of RN and/or APRN license, if license has not been active for five years or more;

4. registered nurse students prior to enrollment in the first clinical nursing course.

C. The board may require criminal history record information checks of the following individuals:

1. an applicant for any license, permit, reinstatement, or permission to enroll in clinical nursing courses if there is reason to believe there is information relative to evaluating the applicants eligibility or disqualification for licensure;

2. a licensee as part of the investigation process if there is reason to believe there is information relative to eligibility or disqualification for continued licensure.

D. The applicant or licensee must review and sign the Authorization to Disclose Criminal History Record Information.

E. The applicant or licensee must contact the state or local police/sheriff department and submit two fingerprint cards to be completed. The law enforcement agency may specify a designated location and fee for the completion of the fingerprint cards.

F. The two completed fingerprint cards must be returned to the board office by the applicant or licensee with the required fee. The cards and fee will be forwarded to the Louisiana Department of Public Safety. The second card will be forwarded to the Federal Bureau of Investigations by the Louisiana Department of Public Safety.

G. The submission of the fingerprint cards and the signed Authorization to Disclose Criminal History Record Information must be received prior to the license being processed or during the semester that the first clinical nursing course has begun.

H. The processing of the license or the entry into clinical nursing courses may not be delayed awaiting these reports; however, future action may result if the criminal history record information so indicates. If the criminal history record reveals criminal activity which constitutes grounds for denial under R.S. 37:921. or LAC 46:XLVII.3331, then the license issued shall be recalled or the progression in clinical nursing courses may be denied.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:920.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Nursing, LR 26:

Interested persons may submit written comments on the proposed rules to: Barbara L. Morvant, Executive Director, Louisiana State Board of Nursing, 3510 North Causeway Boulevard, Suite 501, Metairie, LA 70002. The deadline for receipt of all written comments is 4:30 p.m. on May 5, 2000.

**Family Impact Statement**

I. What effect will this rule have on the stability of the family?

This rule will have no effect on the stability of the family.

II. What effect will this have on the authority and rights of persons regarding the education and supervision of their children?

This rule has no effect on education and supervision of children.

III. What effect will this have on the functioning of the family?

This rule has no effect on the functioning of the family.

IV. What effect will this have on family earning and family budget?

Families who comprise registered nurse applicants and/or registered nurse students would be impacted.

V. What effect will this have on the behavior and personal responsibility of children?

This rule has no effect on behavior and personal responsibility of children.

VI. Is the family or local government able to perform the function as contained in this proposed rule?

The family or local government cannot perform the function as contained in this proposed rule.

Barbara L. Morvant  
Executive Director , M.N.,R.N.

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Criminal History Record Information**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is estimated that implementation of the proposed rule will increase expenditures by \$56,569 in FY 01 and \$60,586 in FY 02. The costs include personnel services of one FTE clerical employee (Clerk 4), \$16,471, and 0.5 FTE professional employee (RN Program Manager), \$31,108. The base salary amount for the personnel is increased by 12.4% for retirement, 1.45% for payroll taxes, \$1,200/year for health insurance, and 4% increase each year for merit increases.

The operating expenses include two new forms estimated at a cost of \$500 per year and office supplies at \$200 per year. Other charges for FY 00 include one file cabinet at \$500 and cost to publish the rule in the *Louisiana Register* at \$45.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The Louisiana State Board of Nursing will not receive any revenue from this rule change. The fees collected will be forwarded to the Louisiana Department of Public Safety to pay for the state and national criminal checks.

The Louisiana Department of Public Safety will receive the \$10 fee for the state criminal check. The Federal Bureau of Investigation (FBI) will receive the \$24 fee for the national criminal check. The Louisiana Department of Public Safety (State Police) will process an estimated 6,220 fingerprint cards to do the state criminal check and will forward that same number to the Federal Bureau of Investigation to do the national criminal check. This change represents an increase in state checks by 4,000 at a revenue of \$10 per check for a total of \$40,000.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Registered nurse applicants and registered nurse students enrolling in the first clinical nursing course will have to pay \$34 for the state and national criminal checks, \$10 to state and \$24 to federal, plus the cost of having the fingerprint card completed (estimated at \$10).

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated impact on competition by this proposed rule. There may be some impact on employment in that the state and national criminal records may cause the denial of licensure for registered nurse license or denial of progression to the first clinical nursing course by registered nursing students who are found to have serious criminal histories.

Barbara L. Morvant, M.N, R.N.  
Executive Director  
0004#096

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Board of Nursing**

Disciplinary Proceedings (LAC 46:XLVII.3403 and 3404)

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 and R.S. 37:919 intends to adopt rules amending the Professional and Occupational Standards pertaining to the Proceedings Against a Registered Nurse; Advanced Practice Registered Nurse; Registered Nurse Applicant; APRN Applicant or a Student Nurse and repeal LAC 46:XLVII.3404, Proceedings Involving Students Enrolled in Clinical Nursing Course The proposed amendments of the rules are set forth below.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XLVII. Nurses**

**Subpart 2. Registered Nurses**

**Chapter 34. Disciplinary Proceedings; Alternative to  
Disciplinary Proceedings**

**§3403. Proceedings Against a Registered Nurse,  
Advanced Practice Registered Nurse, Registered  
Nurse Applicant, APRN Applicant or a Student  
Nurse**

A. The board may deny, revoke, suspend, probate, limit, reprimand, or restrict any license to practice as a registered nurse or an advanced practice registered nurse, impose fines, assess costs, or otherwise discipline an individual in accordance with R.S. 37:921-925 and the board may limit, restrict, delay or deny a student nurse from entering or continuing the clinical phase of education in accordance with R.S. 37:921-925.

B. - C. . . .

D. Grounds for disciplinary proceedings are specified in R.S. 37:921:

1. - 9.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918, R.S. 37:921, R.S. 37:922 and R.S. 37:923.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Nursing, LR 21:269 (March 1995), amended by the Department of Health and Hospitals, Board of Nursing, LR 24:1293 (July 1998), amended LR 26:

**§3404. Proceedings Involving Students Enrolled in Clinical Nursing Courses**

**Repealed**

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918, R.S. 37:921, R.S. 37:922 and R.S. 37:923.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 24:1293 (July 1998), repealed by the Department of Health and Hospitals, Board of Nursing, LR 26:

Interested persons may submit written comments on the proposed rules to: Barbara L. Morvant, Executive Director, Louisiana State Board of Nursing, 3510 North Causeway Boulevard, Suite 501, Metairie, LA 70002. The deadline for receipt of all written comments is 4:30 p.m. on May 5, 2000.

**Family Impact Statement**

The Louisiana State Board of Nursing hereby issues this Family Impact Statement: The proposed revisions to the rule for Proceedings Against a Registered Nurse, Advanced Practice Registered Nurse, Registered Nurse Applicant, APRN Applicant or a Student Nurse and repeal of Proceedings Against a Registered Nurse 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: Disciplinary Proceedings**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The only implementation cost is the \$45 cost to publish the rule in the *Louisiana Register*. Sections 3403 and 3404 are being combined. The context of the rules does not change.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There is no effect on revenue collections of state and local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

There are no estimated costs and/or economic benefits to directly affected persons or nongovernmental groups.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There is no anticipated effect on competition and employment.

Barbara L. Morvant, M.N., R.N.  
Executive Director  
0004#097

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Board of Nursing**

Official Office of the Board  
(LAC 46:XLVII.3305)

Notice is hereby given, in accordance with the provisions of the Administrative Procedures 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 and R.S. 37:919 intends to adopt rules amending the Professional and Occupational Standards pertaining to the appointing authority of the executive director. The proposed amendments of the rules are set forth below.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XLVII. Nurses**

**Subpart 2. Registered Nurses**

**Chapter 33. General**

**Subchapter A. Board of Nursing**

**§3305. Official Office of the Board**

A. ...

B. An executive director, who shall be a registered nurse, shall be appointed by the board to carry out functions of the board relative to its statutory requirements and other work defined by the board. The executive director serves as appointing authority and may appoint any additional employees for professional, clerical, and special work necessary to carry out the board's functions and with the board's approval, may establish standards for the conduct of employees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:919 and R.S. 37:918.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of nursing, LR 7:73 (March 1981), amended by the Department of Health and Hospitals, Board of Nursing, LR 22:104 (February 1996), LR 24:1293 (July 1998), amended LR 26:

Interested persons may submit written comments on the proposed rules to: Barbara L. Morvant, Executive Director, Louisiana State Board of Nursing, 3510 North Causeway Boulevard, Suite 501, Metairie, LA, 70002. The deadline for receipt of all written comments is 4:30 p.m. on May 5, 2000.

### Family Impact Statement

The Louisiana State Board of Nursing hereby issues this Family Impact Statement: The proposed 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: Official Office of the Board

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
The only implementation cost is the estimated \$45 cost of publishing the rule in the *Louisiana Register*.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There is no effect on revenue collections of state and local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
There is no estimated cost and/or economic benefits to directly affected persons or nongovernmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There is no anticipated effect on competition and employment

Barbara L. Morvant, R.N, M.N  
Executive Director  
0004#095

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Department of Health and Hospitals Board of Pharmacy

#### Drug Returns (LAC 46:LIII.3517)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the Louisiana Pharmacy Practice Act (R.S. 37:1163 et seq.), the Louisiana Board of Pharmacy hereby gives notice of its intent to amend the referenced rule.

The full text of this proposed rule may be obtained by contacting the Louisiana Board of Pharmacy at 5615 Corporate Blvd., Suite 8-E in Baton Rouge, LA 70808, or by telephoning (225) 925-6496.

Any person may submit data, views, or positions, orally or in writing, to the Louisiana Board of Pharmacy as indicated above. Under the provisions of the Administrative Procedure Act, if a public hearing is necessary, it will be held from 1:00 p.m. to 4:00 p.m. on May 30, 2000 at the Baton Rouge Hilton Hotel, 5500 Hilton Avenue, Baton Rouge, La.

### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part LIII. Pharmacists

#### Chapter 35. Pharmacy Prescription Drugs

#### §3517. Drug Returns

A. Drugs dispensed on prescription to a patient shall not be accepted for return, exchange, or re-dispensing by any pharmacist or pharmacy after such drugs have been removed from the pharmacy premises where they were dispensed except:

1. In a hospital with a permitted hospital pharmacy on site, drugs may be returned to the pharmacy in accordance with good professional practice standards.

2. In facilities licensed by the Louisiana Department of Health and Hospitals where United States Pharmacopoeia (USP) storage requirements can be assured, legend drugs, except controlled substances, dispensed in unit dose or in individually sealed doses may be transferred to a provisional permitted pharmacy for relabeling and dispensing to the indigent, free of charge, pursuant to a valid prescription order.

a. The pharmacist-in-charge (PIC) of the provisional permitted pharmacy shall be responsible to determine the suitability of the product for reuse.

i. No product where integrity cannot be assured shall be accepted for re-dispensing by the pharmacist.

ii. A re-dispensed prescription medication shall be assigned the expiration date stated on the package.

iii. No product shall be re-dispensed more than one time.

b. Pursuant to a voluntary agreement between a facility licensed by the Louisiana Department of Health and Hospitals and a pharmacy holding a provisional permit from the Louisiana Board of Pharmacy, legend drugs, except controlled substances, may be transferred from the facility to the pharmacy provided the following procedures are satisfied:

i. The physical transfer shall be accomplished by a person authorized to do so by the provisional permitted pharmacy.

ii. The patient from whom the prescription medication was obtained shall document their consent for the donation; the consent shall be maintained on file at the facility.

iii. The patient's name, prescription number, and any other identifying marks, shall be obliterated from the packaging prior to removal from the facility.

iv. The drug name, strength, and expiration date shall remain on the medication package label.

v. An inventory list of the drugs shall accompany the drugs being transferred; at a minimum, the list shall contain the medication name, strength, expiration date, and quantity.

vi. Expired drugs shall not be transferred; personnel designated by the facility shall destroy them on-site.

AUTHORITY NOTE: Promulgated in accordance with LRS 37:1182.A.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 26:

### Family Impact Statement

In accordance with Section 953 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. The following statements will be published in the *Louisiana Register* with the proposed agency rule.

I. The Effect on the Stability of the Family. Implementation of this proposed rule will have no known effect on the stability of the family.

II. The Effect on the Authority and Rights of Parents Regarding the Education and Supervision of Their Children. Implementation of this proposed rule will have no known effect on the authority and rights of parents regarding the education and supervision of their children.

III. The Effect on the Functioning of the Family. Implementation of this proposed rule will have no known effect on the functioning of the family.

IV. The Effect on Family Earnings and Family Budget. Implementation of this proposed rule will have no known effect on family earnings but a beneficial effect on the family budget of certain indigent patients. These indigent patients may receive, free of charge, medications transferred to provisional pharmacies.

V. The Effect on the Behavior and Personal Responsibility of Children. Implementation of this proposed rule will have no known effect on the behavior and personal responsibility of children.

VI. The Ability of the Family or a Local Government to Perform the Function as Contained in the Proposed Rule. Implementation of this proposed rule will have no known effect on the ability of the family or a local government to perform the function as contained in the proposed rule.

Malcolm J. Broussard, RPh  
Executive Director

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: Drug Returns

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The cost to the agency to implement the proposed rule consists of printing and distribution of the rule to the 2000 holders of the Louisiana Board of Pharmacy Book of Laws and Regulations. That cost is estimated to be \$3,422. The agency has sufficient self-generated funds budgeted and available to implement this proposed rule.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

To the extent that uninsured individuals receive medications through the state hospital system, the Board anticipates a potential cost avoidance for the Department of Health and Hospitals as well as the Health Care Services Division of Louisiana State University. At this time, the Board cannot determine the potential cost due to the lack of historical data.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The organizations directly affected by this proposed rule are the provisional "free" pharmacies located throughout the state. These pharmacies will benefit through the donation of previously dispensed medications from patients in certain health care facilities. The donated medications will then be dispensed, free of charge, to qualified indigent patients.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The effects on competition and employment cannot be determined at this time.

Malcolm J. Broussard  
Executive Director  
0004#027

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Department of Health and Hospitals Board of Pharmacy

#### Pharmacy Technicians (LAC 46:LIII.Chapter 8)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the Louisiana Pharmacy Practice Act (R.S. 37:1163 et seq.), the Louisiana Board of Pharmacy hereby gives notice of its intent to repeal the current contents of the referenced chapter and adopt the proposed entire chapter.

Pursuant to the authority granted under R.S. 37:1212, the Board adopts the following minimum training, education, continuing education, and examination requirements for pharmacy technicians.

The full text of these proposed rules may be obtained by contacting the Louisiana Board of Pharmacy at 5615 Corporate Blvd., Suite 8-E in Baton Rouge, LA 70808, or by telephoning (225) 925-6496.

Any person may submit data, views, or positions, orally or in writing, to the Louisiana Board of Pharmacy as indicated above. Under the provisions of the Administrative Procedure Act, if a public hearing is necessary, it will be held from 1:00 p.m. to 4:00 p.m. on May 30, 2000 at the Baton Rouge Hilton Hotel, 5500 Hilton Avenue, Baton Rouge, LA.

#### Title 46

#### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part LIII. Pharmacists

#### Chapter 8. Pharmacy Technicians

#### §801. Qualifications

A. A pharmacy technician trainee (hereinafter referred to as "trainee") shall meet the following conditions:

1. Age-at least 18 years of age, as evidenced by copy of birth certificate.

2. Character-good moral character and be non-impaired, as evidenced by copy of criminal background check.

3. Education-high school graduate or GED equivalent, as evidenced by copy of credential.

4. Experience-obtain a minimum of 1,000 hours practical experience in a pharmacy permitted by the Board, as evidenced by signed affidavit.

5. Examination-pass the Board-approved pharmacy technician examination, as evidenced by copy of credential.

B. Exception-a pharmacist or pharmacist intern whose license has been denied, revoked, suspended, or restricted for disciplinary reasons by any Board of Pharmacy shall not be a trainee or a pharmacy technician.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1212.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 26:

### **§803. Experience**

A. Upon receipt of a properly completed application for a Pharmacy Technician Trainee Work Permit, the Board shall issue a work permit to the trainee in order to obtain the necessary practical experience.

1. The work permit shall be displayed in the prescription department.

2. The work permit shall expire one year from the effective date.

3. After expiration of an initial work permit, the trainee shall not apply for another work permit for a period of 36 months.

4. A trainee shall notify the Board, in writing, within ten days of a change in the mailing and/or home address, giving their name and social security number, as well as old and new addresses.

5. The Board shall reserve the right to refuse or recall any work permit for just cause.

B. A trainee shall supply by affidavit evidence of a minimum 1,000 hours practical experience earned under the direct and immediate supervision of a pharmacist.

1. The ratio of pharmacist to trainee on duty shall not exceed one-to-one.

2. Hours shall be listed on an affidavit supplied by the Board, signed by the pharmacist and the trainee, notarized, and submitted to the Board for approval and/or credit.

3. A trainee may receive credit for a maximum of 50 hours per week.

4. A trainee shall not obtain hours in a permitted site that is on probation or with a pharmacist who is on probation.

5. A separate affidavit shall be required for each permitted site.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1212.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 26:

### **§805. Examination**

A. The board approved pharmacy technician examination shall consist of integrated subject disciplines, as the Board may deem appropriate.

B. The pharmacy technician examination may be offered when necessary as determined by the Board.

C. A trainee shall pass the Board-approved pharmacy technician examination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1212.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 26:

### **§807. Pharmacy Technician Certificate**

A. Upon receipt of a properly completed and notarized application and the appropriate fee, and following verification that all requirements have been satisfied, the Board shall issue a pharmacy technician certificate to the trainee.

B. The pharmacy technician certificate shall be displayed in a conspicuous place in the prescription department in such a manner as to be visible to the public. The annual renewal shall be attached or posted next to the pharmacy technician certificate.

C. In the event of loss or destruction of a pharmacy technician certificate, the Board may issue a duplicate upon receipt of a properly completed and notarized affidavit and the appropriate fee.

D. The pharmacy technician annual renewal shall expire and become null and void on June 30 of each year.

1. The Board shall mail no later than May 1 of each year an application for renewal to all pharmacy technicians.

2. An application for a lapsed pharmacy technician renewal, accompanied by all outstanding fees, shall be referred to the Board's reinstatement committee for consideration.

E. A pharmacy technician shall notify the Board, in writing, within ten days of any change in mailing and/or home address, giving their name and certificate number, as well as old and new addresses.

F. A pharmacy technician shall notify the Board, in writing, within ten days of a change in employment, listing the name, address, and permit numbers of old and new employment pharmacies, as well as their name and certificate number.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1212.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 26:

### **§809. Continuing Education**

A. A minimum of one ACPE or Board approved CPE unit, or ten hours, shall be required each year as a prerequisite for annual renewal.

B. Certified pharmacy technicians shall maintain copies of individual records of personal CPE activities at their primary practice site for two years and present them when requested by the Board.

C. If judged appropriate by the Board, some or all of the required number of hours may be mandated on specific subjects. When so deemed, the Board shall notify all pharmacy technicians prior to the beginning of the year in which the CPE is required.

D. Complete compliance with CPE rules is a prerequisite for renewal of a pharmacy technician certificate.

1. Non-compliance with the CPE requirements shall be considered a violation of R.S. 37:1241.A.(2) and shall constitute a basis for the Board to refuse annual renewal.

2. The failure to maintain an individual record of personal CPE activities, or falsifying CPE documents, shall be considered a violation of R.S. 37:1241.A.(22).

3. The inability to comply with CPE requirements shall be substantiated by a written explanation, supported with extraordinary circumstances, and submitted to the Board for consideration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1212.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 26:

### **§811. Impaired Pharmacy Technician**

A. An impaired pharmacy technician is one who suffers from a condition that may cause an infringement on the ability to work safely or accurately. The impairment may be caused by, but not limited to, the following factors:

1. alcoholism;
2. substance abuse or addiction;
3. mental illness;
4. physical illness; or
5. injury.

B. The Board may require an impaired pharmacy technician to comply with the Louisiana Board of Pharmacy Recovery Program for Impaired Pharmacy Technicians, as described in LAC 46:LIII.521.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1212.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 26:

### **§813. Implementation**

A. This chapter shall become effective September 1, 2000.

B. All trainee work permits issued on or before August 31, 2000 shall expire on September 30, 2000.

C. On September 1, 2000, trainees who are in need of additional practical experience to meet the requirement of 1000 hours may apply for one new work permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1212.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 26:

### **Family Impact Statement**

In accordance with Section 953 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. The following statements will be published in the *Louisiana Register* with the proposed agency rule.

#### **I. The Effect on the Stability of the Family**

Implementation of this proposed rule will have no known effect on the stability of the family.

II. The Effect on the Authority and Rights of Parents Regarding the Education and Supervision of their Children.

Implementation of this proposed rule will have no known effect on the authority and rights of parents regarding the education and supervision of their children.

#### **III. The Effect on the Functioning of the Family**

Implementation of this proposed rule will have no known effect on the functioning of the family.

#### **IV. The Effect on Family Earnings and Family Budget**

Implementation of this proposed rule will have no known effect on family earnings and family budget.

V. The Effect on the Behavior and Personal Responsibility of Children

Implementation of this proposed rule will have no known effect on the behavior and personal responsibility of children.

VI. The Ability of the Family or a Local Government to Perform the Function as Contained in the Proposed Rule

Implementation of this proposed rule will have no known effect on the ability of the family or a local government to perform the function as contained in the proposed rule.

Malcolm J. Broussard, RPh  
Executive Director

## **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Pharmacy Technicians**

### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The cost to the agency to implement the proposed rule consists of printing and distribution of the rule to the 2000 holders of the Louisiana Board of Pharmacy Book of Laws and Regulations. That cost is estimated to be \$3,422. The agency has sufficient self-generated funds budgeted and available to implement this proposed rule.

### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The agency anticipates and has budgeted a decrease of \$10,000 in licensure fees from pharmacy technicians for FY 00-01. As the pool of pharmacy technician trainees adapt to the new rules, the Board anticipates a return to baseline in the number of new pharmacy technician licenses issued annually.

### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The only persons directly affected by this proposed rule are the approximately 700 pharmacy technician trainees currently working toward certification as pharmacy technicians. There is no increase in costs to the trainees as a result of this proposed rule. The Board is unable to determine any impact on income or receipts by the trainees as a result of the proposed rule.

### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

Following an initial decrease in the number of pharmacy technician trainees qualifying for certification and employment as pharmacy technicians, the Board anticipates a return to baseline in the number of new pharmacy technician licenses issued annually by the agency. The effects on competition cannot be anticipated at this time.

Malcolm J. Broussard  
Executive Director  
0004#026

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

## **NOTICE OF INTENT**

### **Health and Hospitals Board of Physical Therapy Examiners**

Licensure; Unauthorized Practice; and  
Supervision (LAC 46:LIV.Chapters 1 and 3)

Notice is hereby given, in accordance with R.S. 49:950 et seq., the Administrative Procedure Act, that the Board of Physical Therapy Examiners (board), pursuant to the authority vested in the board by R.S. 2401.2A(3) intends to amend its existing rules as set forth below. The proposed amendments to the rules have no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

**Title 46**  
**PROFESSIONAL AND OCCUPATIONAL**  
**STANDARDS**

**Part LIV. Physical Therapy Examiners**  
**Subpart 1. Licensure**

**Chapter 1. Physical Therapists and Physical Therapist Assistants**

**Subchapter B. Graduates of American Physical Therapy Schools**

**§107. Qualifications for License**

A. - B.3. ...

4. have graduated from an associate degree program accredited by the Commission on Accreditation of Physical Therapy Education (CAPTE); and

B.5 - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2(A)3.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:744 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:387 (May 1989), LR 17:662 (July 1991), LR 19:208 (February 1993), LR 22:284 (April 1996), LR 24:39 (January 1998), LR 26:

**§109. Procedural Requirements**

In addition to the substantive qualifications specified in §107, to be eligible for a license, an applicant shall satisfy the procedures and requirements for application provided by §§123-129 of this Chapter, and if applicable, the procedures and requirements for examination required by the board provided by §§131-149 of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2A(3).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:744 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 26:

**Subchapter C. Graduates of Foreign Physical Therapy Schools**

**§115. Qualifications for License**

A. - A.1. ...

2. have successfully completed his education in physical therapy that is substantially equivalent to the requirements of physical therapists educated in accredited physical therapy programs in the United States as the board, upon evaluation of the applicants educational program by an approved credentials evaluation service, deems sufficient, however, such substantially equivalent education shall be no less than a total of 120 semester hour credits which includes a minimum of 60 semester hour credits for professional education and a minimum of 40 semester hours of general education as established in a course work evaluation tool approved by the board;

3. - 5. ...

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2A(3).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:744 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 17:662 (July 1991), LR 18:962 (September 1992), LR 19:208 (February 1993), LR 22:284 (April 1996), LR 24:39 (January 1998), LR 26:

**§117. Procedural Requirements**

In addition to the substantive qualifications specified in §115, to be eligible for a license, a foreign graduate applicant shall satisfy the procedures and requirements for application provided by §§123-129 of this Chapter, and the procedures and requirements for examination required by the board required in §§131-149 of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2A(3).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:745 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 17:662 (July 1991), LR 26:

**Subchapter E. Application**

**§125. Application Procedure**

A. Application for licensure shall be made on original forms supplied by the board.

B. If application is made for licensure on the basis of examination, such examination shall be a national examination approved by the board and administered at an approved testing service.

C. Application for licensure by reciprocity shall comply with the requirements set forth in Subchapter D.

D. - I. ...

J. To assure equal opportunity for all persons, the board will make reasonable accommodations for an applicant for licensure by examination if the applicant has a qualified disability pursuant to applicable law and is approved by the board. A request for a reasonable accommodation, with supporting documentation, must be submitted in writing to the board during the application process and within a reasonable time before administration of the examination for the board to make a decision regarding the request.

K. Every applicant shall personally sign his application for licensure and oath.

L. An application which is incomplete will be closed after six months of inactivity. At the end of this period, any application which is not completed will be considered abandoned and closed by the board and any fees paid shall not be refunded. Should the applicant re-apply after his incomplete application is closed, he shall be required to begin the process anew which includes the payment of the application fee to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2A(3).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:745 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:387 (May 1989), LR 17:663 (July 1991), LR 19:208 (February 1993), LR 26:

**§127. Additional Requirements for Foreign Graduates**

A. ...

B. As a condition to the board's consideration of a foreign graduate application, the board must receive a comprehensive credential evaluation certificate from an approved credentialing agency which includes, but is not limited to, the Foreign Credentialing Commission on Physical Therapy (FCCPT).

C. A foreign graduate must comply with §125, and more particularly in complying with §125.I, the board-approved supervisor shall also attend the personal appearance of the

applicant with a member of the board, or its designee, as a condition to the board's consideration of his application.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:2401.2(A)3.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:745 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:387 (May 1989), LR 19:208 (February 1993), LR 26:

## **Subchapter F. Examination**

### **§131. Designation of Examination**

The examination approved by the board pursuant to R.S. 37:2409 shall be standardized and nationally accepted by the Federation of State Boards of Physical Therapy.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:2401.2A(3).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:746 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:387 (May 1989), LR 17:663 (July 1991), LR 26:

### **§135. Dates, Places of Examination**

Once the application process is completed, including the payment of fees, the applicant will be notified of his eligibility to schedule the examination at any approved testing service. Within 60 days from the date specified in the eligibility letter, the applicant must sit for the examination. If the examination is not taken within the referenced 60 days, the applicant is removed from the eligibility list and must begin the application process again including the payment of the examination costs to the Federation of State Boards of Physical Therapy Examiners.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:2401.2A(3).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:746 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:387 (May 1989), LR 26:

### **§137. Administration of Examination**

A. The Board's licensing examination is administered by an approved testing service and is computer based. The testing service is authorized and directed by the board to obtain positive photographic identification from all applicants appearing and properly registered for the examination; to establish and require examinees to observe an appropriate seating arrangement; to provide appropriate instructions for taking the examinations; to fix and signal the time for beginning and ending the examination; to prescribe such additional rules and requirements as are necessary or appropriate to the taking of the examination in the interest of the examinees of the examination process; and to take all necessary and appropriate actions to secure the integrity of the examination process, including, without limitation, excusing an applicant from the examination or changing an applicant's seating location at any time during the examination.

B. An applicant who appears for examination shall:

1. present to the appropriate representative of the testing service positive personal photograph and other identification in the form prescribed;

2. fully and promptly comply with any and all rules, procedures, instructions, directions, or requests made or prescribed by the testing service; and

3. pay the site fee for the examination directly to the testing service at the time of registration with the testing service and in the amount and form prescribed by the testing service.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:2401.2A(3).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:746 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:387 (May 1989), LR 17:663 (July 1991), LR 26:

### **§139. Subversion of Examination Process**

A. - B. ...

1. refusing or failing to fully and promptly comply with any rules, procedures, instructions, directions, or requests made or prescribed by the testing service;

2. - 10. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:2401.2A(3).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:747 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:387 (May 1989), LR 17:664 (July 1991), LR 26:

### **§141. Finding of Subversion**

A. When, during the administration of examination, there exists reasonable cause to believe that an applicant-examinee is engaging, or attempting to engage, in subversion, action shall be taken as deemed necessary or appropriate to terminate such conduct and such conduct shall be reported to the board.

B. ...

C. When the board, has reasonable cause to believe that an applicant has engaged or attempted to engage in conduct which subverts or undermines the integrity of the examination process, the board shall so advise the applicant and provide him with an opportunity for hearing pursuant to the Administrative Procedure Act and applicable rules of the board governing administrative hearings.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:2401.2A(3).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:746 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 17:663 (July 1991), LR 26:

### **§149. Lost, Stolen or Destroyed Examinations**

The submission of an application for examination to the board by the applicant shall constitute and operate as an acknowledgment and agreement by the applicant that the liability of the board, its members, committees, employees and agents, and the state of Louisiana to the applicant for the loss, theft or destruction of all or any portion of an examination taken by the applicant, prior to the reporting of scores thereon by the examination service, other than by intentional act, shall be limited exclusively to the refund of the fees paid to the board for the examination by the applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2A(3).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:747 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:387 (May 1989), LR 17:664 (July 1991), LR 26:

### **Subchapter G. Temporary Permit**

#### **§151. Temporary Permits in General**

A. - B. ...

C. A holder of a temporary permit pending examination or reexamination, whether a domestic or foreign graduate, must schedule and sit for the licensure examination prior to the temporary permit expiration date. An extension of the temporary permit will not be issued beyond the expiration date without written proof of the examination having been taken by the applicant.

D. The board may issue a temporary permit for a limited time period to a physical therapist licensed in another state, or a foreign trained physical therapist credentialed in another country, to perform physical therapy services on a patient as part of an educational seminar or athletic event recognized and approved by the board. One or more temporary permits issued to the same person shall not exceed a total of 60 days in a calendar year. Such temporary permit holder shall be obligated to comply with the provisions of the Physical Therapy Practice Act of Louisiana and the board's rules regarding the practice of physical therapy in Louisiana. The temporary permit holder is obligated to obtain the temporary permit prior to his performing physical therapy services pursuant to this paragraph.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2A(3).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:747 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 19:208 (February 1993), LR 26:

#### **§155. Permit Pending Reexamination**

A. An applicant who possesses all of the qualifications for licensure prescribed by §107 of this Chapter, except for §107.A.5 and §107.B.5, who has once failed the licensing examination administered by the Board, and who has applied to the board within 10 days of receipt of written notice and completed all requirements for examination shall be issued a new temporary permit to be effective for 60 days.

B. - C.1 ...

2. failure of a permit holder to appear for and take the licensing examination within the 60-day permit period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2A(3) and Act 731 of 1992.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:747 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:388 (May 1989), LR 17:664 (July 1991), LR 19:208 (February 1993), LR 26:

### **Subchapter H. License and Permit Issuance,**

#### **Termination, Renewal and Reinstatement**

#### **§161. Issuance of License**

A.-B. ...

C. A licensee shall not copy or otherwise reproduce his license or allow another person to copy or otherwise reproduce his license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2A(3).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:748 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:388 (May 1989), LR 17:664 (July 1991), LR 26:

### **Subchapter I. Continuing Education**

#### **§169. Requirements**

A. Minimum Continuing Education Requirements. Licensees shall document successful completion of 1.2 units, or 12 hours of acceptable continuing education credit during each annual period.

B. Criteria of Acceptability. Acceptable continuing education activities are defined as formally organized and planned instructional experiences of at least two hours duration per sitting; with a qualified instructor or instructors; and with objectives compatible with the professional continuing education needs of the physical therapist or physical therapist assistant. There are two types of approved courses: clinical and administrative. The entirety of the annual requirement may be comprised of approved clinical courses. A maximum of four hours of approved administrative courses will be allowed to be applied to the annual requirement.

1. Continuing Education Activities Specifically Acceptable for License Renewal. Prior board approval is recommended for all activities other than those specified under Subparagraphs a. and b. below. However, activities listed in category a. below must comply with the criteria of acceptability referenced in §169.B above. Continuing education activities which do not fit into categories in §169.B.1a. and b. below and have not been pre-approved by the board prior to participation may or may not be acceptable to the board as fulfilling continuing education requirements.

a. APTA (American Physical Therapy Association) accredited courses, LPTA (Louisiana Physical Therapy Association) accredited courses, APTA home study courses, or Louisiana State University Health Sciences Center, School of Physical Therapy, sponsored courses.

B.1.b. - B.3.e. ...

f. continuing education activities less than two consecutive hours in duration, or valued at less than 0.2 units of continuing education credit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2A(3) and Act 731 of 1992.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:388 (May 1989), LR 17:664 (July 1991), LR 19:208 (February 1993), LR 21:394 (April 1995), LR 21:1243 (November 1995), LR 26:

### **Subchapter J. Responsibilities**

#### **§177. Committees**

The board may appoint committees to assist in the review of an applicant's qualifications for licensure; conduct an applicant's interview to deliver a temporary permit; review continuing education requirements and activities; and other purposes deemed necessary by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2A(3) and Act of 1992.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 17:666 (July 1991), LR 19:208 (February 1993), LR 26:

### §179. Board Meeting Attendance

Regularly scheduled meetings of the board are held once each month. Board members are required to attend a minimum of 80 percent of the regularly scheduled meetings, as well as special meetings, open forums or hearings which may be scheduled in conjunction with or separate from regularly scheduled meetings. Attendance constitutes active participation in at least 80 percent of the entire meeting. Exceptions may be granted for good cause by the board. Notification of an expected absence shall be submitted to the board office as soon as possible prior to the commencement of the meeting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2A(3) and Act of 1992.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 17:666 (July 1991), LR 19:208 (February 1993), LR 26:

#### Subpart 2. Practice

### Chapter 3. Practice

#### Subchapter A. General Provisions

### §305. Special Definition; Practice of Physical Therapy

A. ...

\* \* \*

#### *Physical Therapy Supportive Personnel*

a. ...

b. *Physical Therapist Assistant* a person licensed by the board who is a graduate of an associate degree program in physical therapist assisting accredited by the Commission on Accreditation of Physical Therapy Education (CAPTE) or was granted licensure pursuant to R.S. 37:2403.D.

c. ...

*Preventative Services* the use of physical therapy knowledge and skills to provide education or activities in a wellness setting for the purpose of injury prevention, reduction of stress and/or the promotion of fitness, but does not include the administration of physical therapy treatment and, therefore, can be performed without referral or prescription.

*Topical Agents/Aerosols* topical medications or aerosols used in wound care which are obtained over the counter or by physician prescription or order.

*Wound Care and Debridement* a physical therapist, physical therapist permittee or student physical therapist may perform wound debridement and wound management that includes, but is not limited to, sharps debridement, debridement with other agents, dry dressings, wet dressings, topical agents including enzymes, and hydrotherapy. A physical therapist assistant, physical therapist assistant permittee or student physical therapist assistant shall not perform sharps debridement.

B. Minimal standards of acceptable and prevailing physical therapy practice shall include, but not be limited to, the American Physical Therapy Association Codes of Ethics, Guides for Professional Conduct and Standards of Practice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2A(3).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:748 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 17:666 (July 1991), LR 19:208 (February 1993), LR 21:1243 (November 1995), LR 24:40 (January 1998), LR 26:

### Subchapter B. Practice of Physical Therapy

### §307. Prohibitions and Practice

A. - C. ...

D. A licensed physical therapist is authorized to engage in the practice of physical therapy as set forth in the Physical Therapy Practice Act and the board's rules which includes, but is not limited to, the performance of physical therapy evaluations, consultative services, wound care and debridement, the storage and administration of aerosol and topical agents, the performance of passive manipulation, and preventative services all as more fully defined in §305.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2(A)3.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:749 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 21:395 (April 1995), LR 24:40 (January 1998), LR 26:

### Subchapter C. Supervised Practice

### §317. General Supervision Requirements for Permittees

A. ...

B. A licensed physical therapist who undertakes to supervise a physical therapist or physical therapist assistant holding a temporary permit under §153 or §155 of these rules shall:

1. - 5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2A(3).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:749 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:38 (May 1989), LR 17:667 (July 1991), LR 24:41 (January 1998), LR 26:

### §321. Supervision Requirements

A. - A.1. ...

a. be on premises daily in each practice setting for at least one half of the physical therapy treatment hours in which the physical therapist assistant is rendering physical therapy treatment;

A.1.b. - C.1. ...

2. A physical therapist aide/technician may assist a physical therapist assistant or a physical therapist assistant permittee in patient care as assigned by the physical therapist who must be continuously, on the premises during the provision of physical therapy services.

D. - E.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2A(3).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:750 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:388 (May 1989), LR 19:208 (February 1993), LR 24:41 (January 1998), LR 26:

### §323. Documentation Standards

A. - C. ...

D. Documentation by a student must be co-signed by the supervising physical therapist or supervising physical therapist assistant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2A(3).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:750 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:389 (May 1989), LR 21:395 (April 1995), LR 26:

#### Subchapter D. Disciplinary Proceedings

##### §331. Initiation of Complaints

Complaints may be initiated by any person or by the board on its own initiative. A licensee or temporary permittee is obligated to report violations of the Practice Act, board's rules or the American Physical Therapy Association's Codes of Ethics, Guides for Professional Conduct and Standards of Practice. Failure by a licensee or temporary permittee to report such violations to the board subjects the licensee or temporary permittee to disciplinary action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2A(3).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:389 (May 1989), LR 19:208 (February 1993), LR 26:

Pursuant to the Administrative Procedure Act, if oral presentation or argument is requested by the requisite number of persons or the proper entities, then a public hearing on these matters will be held on May 25, 2000, at 10 a.m. at the office of the Board of Physical Therapy Examiners, 714 East Kaliste Saloom, Suite D2, Lafayette, LA 70508. Please contact the board office at (337) 262-1043 to confirm whether or not the public hearing will be conducted.

Written comments concerning the proposed rules may be directed to this address and made to the attention of Becky Legé, Chairman. Such comments should be submitted no later than the close of business at 5 p.m. on Friday, May 19, 2000.

Becky Legé  
Chairman

#### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

##### RULE TITLE: Unauthorized Practice; and Supervision

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There will be an implementation cost to the state of \$200 for publication of the amendments to the rules. The cost involves reprinting of the rules to incorporate the new amendments which are being promulgated. The rules, as amended, will be provided to the board's licensees and other interested parties.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The board anticipates a minimal increase in revenue from continuing education course sponsors applying for approval of courses available for continuing education contact hours for physical therapists and physical therapists assistants. The increase in revenue for the course sponsors prior approval will be \$1,750 in FY 01, \$2625 in FY 02, and \$3500 in FY 03, due to the reduction from a four-hour to a two-hour minimum attendance period for CEU requirements. The board does not sponsor continuing education courses.

The board anticipates a minimal increase in revenue of \$150 per year for FY 01, FY 02, and FY 03 for applicants who

reapply after their initial application has been abandoned or closed after six months nonactivity.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The purpose and effect of the rules amendments set forth in Subchapter 1 regarding licensure are to clarify the existing application/examination process, as well as address miscellaneous administrative issues. With regard to the amendments to the rules in Subchapter 1, there are no estimated costs and/or economic benefits to directly affected persons or nongovernmental groups with the potential exception of the amendments to §305 and §307 regarding preventative services. Preventative services are authorized by the Physical Therapy Practice Act, but not sufficiently clarified in the law for regulatory purposes. Sections 305 and 307, as amended, clearly define and implement preventative services. The rules amendments regarding preventative services may have a minimal economic impact on the providers and recipients of such services; however, any slight impact will be outweighed by the benefit of and improvement to the quality of care to the recipients.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No estimated effect on competition and employment is anticipated.

Becky Legé  
Chairman  
0004#067

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

#### NOTICE OF INTENT

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

##### Family Planning Clinics Reimbursement Reduction

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt the following rule under the Medical Assistance Program as authorized by R.S. 46:153 and 36:254 et seq. and pursuant to Title XIX of the Social Security Act and as directed by the 1999-2000 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 proposed rule is in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing provides coverage for family planning clinic services. Reimbursement for these services is a flat fee established by the Bureau minus the amount which any third-party coverage would pay. As a result of a budgetary shortfall, the Bureau determined that it was necessary to reduce the reimbursement rate for family planning services by 7 percent (*Louisiana Register*, Volume 26, Number 2). The Bureau now proposes to adopt a rule to continue the provisions contained in the February 1, 2000 emergency rule.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed rule

on the family has been considered. 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 reduces the reimbursement to family planning clinics by 7 percent. This action is necessary in order to avoid a budget deficit in the medical assistance programs.

Interested persons may submit written comments to the following address: Ben A. Bearden, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is the person responsible for responding to inquiries regarding this proposed rule. A public hearing on this proposed rule is scheduled for Friday, May 26, 2000 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.

David W. Hood  
Secretary

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Family Planning Clinics' Reimbursement Reduction

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that the implementation of this proposed rule will reduce state program costs by approximately (\$1,542) for SFY 1999-00, (\$9,850) for SFY 2000-01, and (\$10,145) for SFY 2001-02. It is anticipated that \$120 (\$60 SGF and \$60 FED) will be expended in SFY 1999-00 for the state's administrative expense for promulgation of this proposed rule and the final rule.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will reduce federal revenue collections by approximately (\$3,737) for SFY 1999-00, (\$23,516) for SFY 2000-01, and (\$24,222) for SFY 2001-02.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Implementation of this proposed rule will reduce reimbursement to Family Planning Clinics by seven percent. This proposed rule will reduce reimbursement by approximately (\$5,399) for SFY 1999-00, (\$33,366) for SFY 2000-01, and (\$34,367) for SFY 2001-02.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition. As a result of the rate reduction, some clinics may find it necessary to reduce staff or staff hours of work.

David W. Hood  
Secretary  
0004#084

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

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

#### Health Care Facility Sanctions (LAC 50:I.Chapter 55)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt the following rule as authorized by the Health Care Facilities and Services Licensing Enforcement Act, R.S. 40:2199, as enacted by the Legislature in 1997, and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Act 1390 of the 1997 Regular Legislative Session established under R.S. 40:2199 the authority for the Department of Health and Hospitals to impose civil fines on those health care facilities determined to be out of compliance with any state or federal law or rule governing the operation and provision of health care services. It is anticipated that the imposition of civil fines will increase compliance with regulations and thereby improve the quality of health care provided to the citizens of this state. Sanctions specified in the proposed rule are applicable to the violation of any state or federal statute, regulation or Department of Health and Hospital's (Department) rule governing health care services; except nursing facility services. Sanctions for the violation of any state or federal statute, regulation, or department rule governing nursing facilities were previously promulgated.

In compliance with Act 1183 of the 1999 Regular Session, 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 50

### PUBLIC HEALTH/MEDICAL ASSISTANCE

#### Part I. Administration

#### Subpart 7. Sanctions

#### Chapter 55. Health Care Facility Sanctions

#### §5501. General Provisions

A. Any health care facility listed in Subsection B below found to be in violation of any state or federal statute, regulation, or any Department of Health and Hospitals (Department) rule adopted pursuant to the Administrative Procedure Act governing administration and operation of the facility may be sanctioned as provided in this Chapter.

B. For purposes of this rule, facility refers to any agency licensed by Department of Health and Hospitals as an adult day health care center, substance abuse/addiction treatment facility, ambulatory surgical center, case management agency, urine drug screening clinic, suppliers of portable x-ray services, home health agency, hospice, hospital, or intermediate care facility for the mentally retarded.

C. The opening or operation of a facility without a license or registration shall be a misdemeanor punishable upon conviction by a fine of not less than \$1,000, but not more than \$5,000 [for each offense]. Each day's violations shall constitute a separate offense. On learning of such a violation, the Department shall refer the facility to the appropriate authorities for prosecution.

D. Any facility found to have a violation that poses a threat to the health, safety, rights, or welfare of a patient or client may be liable for civil fines in addition to any criminal actions which may be brought under [any] other applicable laws.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2199.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:37 (January 1985), amended LR 11:770 (August 1985), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 18:189 (February 1992), amended LR 26:

### **§5503. Description of Violation and Applicable Civil**

#### **Fines**

##### **A. "Class A" Violations**

1. A "Class A" violation is a violation of a rule or regulation that creates a condition or occurrence relating to the maintenance and operation of a facility which results in death or serious harm to a patient or client. Examples of "Class A" violations include, but are not limited to:

a. acts or omissions by an employee or employees of a facility that either knowingly or negligently resulted in the death of a patient or client;

b. acts or omissions by an employee or employees of a facility that either knowingly or negligently resulted in serious harm to a patient or client.

2. Civil fines for "Class A" violations may not exceed \$2,500 for the first violation and may not exceed \$5,000 per day for repeat violations.

##### **B. "Class B" Violations**

1. A "Class B" violation is a violation of a rule or regulation in which a condition or occurrence relating to the maintenance and operation of a facility is created which results in the substantial probability of death or serious harm to a patient or client if the condition or occurrence remains uncorrected. Examples of "Class B" violations include, but are not limited to:

a. medications or treatments improperly administered or withheld;

b. lack of functioning equipment necessary to care for a patient or client;

c. failure to maintain emergency equipment in working order;

d. failure to employ a sufficient number of adequately trained staff to care for residents or clients; and

e. failure to implement adequate infection control measures.

2. Civil fines for "Class B" violations may not exceed \$1,500 for the first violation and may not exceed \$3,000 per day for repeat violations.

##### **C. "Class C" Violations**

1. A "Class C" violation is a violation of a rule or regulation in which a condition or occurrence relating to the maintenance and operation of a facility that creates a potential for harm by directly threatening the health, safety, rights or welfare of a patient or client, including potential for harm created through exploitation. Examples of "Class C" violations include, but are not limited to:

a. failure to perform treatments as ordered by the physician, including the administration of medications;

b. improper storage of poisonous substances;

c. failure to notify physician and family of changes in condition of a patient or client;

d. failure to maintain equipment in working order;

e. inadequate supply of needed equipment;

f. lack of adequately trained staff necessary to meet a patient or client's needs;

g. failure to adhere to professional standards in giving care to a patient or client; and

h. failure to protect patients or clients from personal exploitation, including, but not limited to, sexual conduct involving facility staff and a patient or client.

2. Civil fine for "Class C" violations may not exceed \$1,000 for the first violation and may not exceed \$2,000 per day for repeat violations.

##### **D. "Class D" Violations**

1. "Class D" violations are violations of rules or regulations related to administrative and reporting requirements that do not directly threaten the health, safety, rights, or welfare of a patient or client. Examples of "Class D" violations include, but are not limited to:

a. failure to submit written report of accidents;

b. failure to timely submit a Plan of Correction;

c. falsification of a record; and

d. failure to maintain a patient's or client's financial records as required by rules and regulations.

2. Civil fines for "Class D" violations may not exceed \$100 for the first violation and may not exceed \$250 per day for repeat violations.

##### **E. "Class E" Violations**

1. "Class E" violations occur when a facility fails to submit a statistical or financial report in a timely manner as required by rule or regulation.

2. Civil fines for "Class E" violations may not exceed \$50 for the first offense and may not exceed \$100 per day for repeat violations.

##### **F. Determination of Amount of Civil Fine**

1. In establishing the amount of civil fines to be imposed against the provider, the Department will consider:

a. all relevant aggravating circumstances, including, but not limited to:

i. whether the violation resulted from intentional or reckless conduct by the provider;

ii. the pervasiveness of the violation;

iii. the duration of the violation; and

iv. the extent of actual or potential harm to patients or clients.

b. all relevant mitigating circumstances, including, but not limited to:

i. whether the provider had taken steps to prevent the violation and

ii. whether the provider had implemented an effective corporate compliance program prior to the violation.

c. When the provider had an effective compliance program in place at the time of the violation, the assessed fine will not exceed 50 percent of the maximum potential fine.

2. The aggregate fines assessed for violations identified in any one calendar month may not exceed \$10,000 for "Class A" and "Class B" violations. The aggregate fines assessed for "Class C", "Class D", and

"Class E" violations identified in any one calendar month may not exceed \$5,000.

G. The Department shall have the authority to determine whether a violation is a repeat violation and to sanction the provider accordingly. A violation is considered a repeat violation if either:

1. the existence of the violation is established as of a particular date and it is one that may be reasonably expected to continue until corrective action is taken. The Department may elect to treat the cited continuing violation as a repeat violation subject to appropriate fines for each day following the date on which the initial violation is established until such time as there is evidence that the violation has been corrected; or

2. the existence of a violation is established and another violation that is the same or substantially similar to the cited violation occurs within 18 months. The second and all similar violations occurring within an 18-month time period will be considered repeat violations and sanctioned accordingly.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2199.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:37 (January 1985), amended LR 11:770 (August 1985), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 18:189 (February 1992), amended LR 26:

#### **§5505. Notice and Appeal Procedure**

A. Notice Requirements. When the Department imposes a civil fine on a health care provider, it shall give the provider written notice of the imposition. The notice shall be delivered by certified mail and shall contain the following information:

1. the nature of the violation(s) and whether the violation(s) is classified as an initial or repeat violation;

2. the legal authority for the violation(s);

3. the civil fine assessed for each violation;

4. information that the facility has ten working days from receipt of the notice within which to request an informal reconsideration of the proposed civil fine;

5. information that the facility has 30 working days from receipt of the notice within which to request an administrative appeal of the proposed civil fine. The request for an informal reconsideration does not constitute a request for an administrative appeal, nor does it extend the time limit for requesting an administrative appeal; and

6. information that the Department's decision becomes final and no administrative or judicial review may be obtained if the facility fails to timely request an informal reconsideration and/or administrative .

B. Informal Reconsideration. The provider may request an informal reconsideration of the Department decision to impose a civil fine.

1. The request must be in writing and received by the Department within ten working days of the provider's receipt of the notice of the imposition of the fine.

2. The reconsideration shall be conducted by designated employees of the Department who did not participate in the initial decision to recommend imposition of the civil fine.

3. The reconsideration decision shall be based upon all documents and oral testimony furnished by the provider

to the Department at the time of the informal reconsideration.

4. Correction of the violation cited for imposition of the civil fine shall not be the basis for a reconsideration.

5. The designated employee(s) shall only have the authority to confirm, reduce or rescind the civil fine.

6. The Department shall notify the provider of the reconsideration decision within ten working days after the reconsideration is conducted.

C. Administrative Appeal. The provider may request an administrative appeal of the Department's decision to impose a civil fine.

1. If a timely request for an administrative appeal is received, the hearing shall be conducted as provided in the Administrative Procedure Act, R.S. 49:950 et seq.

2. An appeal bond shall be posted with the Bureau of Appeals as provided in R.S. 40:2199(D) or the provider may choose to file a devolutive appeal [pay the fine, pending the outcome of all appeals].

3. The provider may request judicial review of the administrative appeal decision as provided in the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2199.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:37 (January 1985), amended LR 11:770 (August 1985), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 18:189 (February 1992), amended LR 26:

#### **§5507. Collection of Fines**

A. The decision to impose a fine is final when:

1. an administrative appeal is not requested within the specified time limit;

2. the facility admits to the violations and agrees to pay the fine; or

3. the administrative appeal affirms the Department finding of violations and the time for seeking judicial review has expired.

B. When Payment of Civil Fines is Final

1. Payment shall be made in full within ten working days of the date the fine becomes final, unless the Department allows a payment schedule in light of documented financial hardship.

2. Arrangements for a payment schedule must commence within ten calendar days of the fine becoming final.

3. Interest shall begin to accrue at the current judicial rate beginning ten working days after the fine becomes due.

C. Failure to make Payment of Assessed Fines. When the assessed fine is not received within the prescribed time period, the Department shall take the following action:

1. For a Medicaid provider, the full amount with accrued interest shall be deducted from funds otherwise due to the provider as Medicaid reimbursement payment due, whether monthly or quarterly.

2. If the provider is non-Medicaid, civil actions shall be instituted as necessary to collect the fines due.

D. Consideration as an Allowable Cost or Charge to Patient/Client

No provider may claim imposed fines or interest as reimbursable costs to Medicaid or Medicare, nor increase

charges to residents, clients or patients as a result of such fines or interest.

E. Disposition of Civil Fines

Civil fines collected shall be deposited in the Health Care Facility Fund maintained by the State Treasury.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2199.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:37 (January 1985), amended LR 11:770 (August 1985), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 18:189 (February 1992), amended LR 26:

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 Friday, May 26, 2000 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.

David W. Hood  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Health Care Facility Sanctions**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that \$320(\$160 SGF and \$160 FED) will be expended in SFY 2000-2001 for the state's administrative cost of promulgating this proposed rule and the final rule. No additional costs are anticipated for SFY 2001-02 and SFY 2002-03.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that implementation of this proposed rule will increase state revenue collections resulting from impositions of civil fines on health care facilities determined to be out of compliance. The amount of this projected increase is not known since there is little historical data from which to draw. Between \$10,000 and \$30,000 per fiscal year might be collected, depending on the compliance rate. In addition, \$160 is projected to be collected in SFY 2000-2001 for the federal share of the cost of promulgating this proposed rule and the final rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Health care facilities determined to be out of compliance with federal or state law, or any rule governing the operation and provision of health care services will have a civil fine imposed on them. The amount of revenue health care facilities will lose as a result of the imposition of civil fines for non-compliance is not known.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Implementation of this proposed rule will not effect competition and employment.

David W. Hood  
Secretary  
0004#089

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

**Minimum Standards/Requirements for Substance Abuse/Addiction Treatment Facilities/Programs (LAC 48:I.Chapter 74)**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to amend the following rules governing the requirements for licensing Substance Abuse/Addiction Treatment Facilities/Programs as authorized by R.S. 40:1058.1 - 1058.9 and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Act 1000 of the 1997 Regular Session of the Legislature authorized the Department of Health and Hospitals to promulgate rules in accordance with R.S. 40:1058.2. These written rules are the Minimum Licensure Standards for Substance Abuse/ Addiction Treatment Facilities. Any facility that presents itself to the public as a provider of services related to the abuse/addiction of controlled dangerous substances, drugs or inhalants, alcohol, problem and compulsive gambling, or a combination of the above is required to have a valid and current license prior to admitting any client. Therefore, the Bureau proposes to adopt the following licensure standards for all substance abuse/addiction treatment facilities/programs in the state.

Any existing licensed facility shall continue to operate abiding by the last amended rules (published in the *Louisiana Register*, Volume12, January 1986) for up to one year from adoption of this final rule. Any facility issued an initial new license will be required to comply with all the following licensure standards upon finalization of this proposed rule. Effective one full year from the adoption of this rule, the provisions of this rule shall govern all facilities, regardless of the date of issuance of license.

This proposed rule shall supersede all previous manuals pertaining to this subject, including the standards manual which comprises the Minimum Standards for Licensing Alcoholism and Drug Abuse/Substance Abuse Programs in its entirety as published in January 1977 and January 1986.

In compliance with Act 1183 of the 1999 Regular Session, the impact of this proposed rule on the family has been considered. It is anticipated that this proposed rule will have no impact on the stability and functioning of the family.

**TITLE 48**  
**PUBLIC HEALTH/GENERAL**  
**Part I. General Administration**  
**Subpart 3. Licensing and Certification**  
**Chapter 74. Minimum Standards/Requirements for Abuse/Addiction Treatment Facilities/Programs**  
**Subchapter A. General Provisions**

**§7401. Definitions and Acronyms**

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

*AADD* abuse/addiction disease/disorder.

*Abuse* any act or failure to act that caused or may have caused injury to a client knowingly, recklessly, or intentionally, including incitement to act. Injury may include, but is not limited to: physical injury, mental disorientation, or emotional harm, whether it is caused by physical action or verbal statement.

*Adequate/Sufficient* reasonable, enough, e.g., personnel to meet the needs of the clients currently enrolled in a specific program.

*Adolescent* an individual between the ages of 13 and 17 inclusive who has not been emancipated by marriage or judicial decree. Incarcerated adolescents will be in accordance with incarceration guidelines.

*Advertise* to solicit or induce to purchase the services provided by a treatment facility.

*Adult* an individual 18 years of age or older, or an individual under the age of 18 who has been emancipated by marriage or judicial decree. Persons aged 16 and above may voluntarily seek and receive substance abuse services without parental consent.

*"At Risk"* identification by the Office for Addictive Disorders (OAD) of greater potential for the use/abuse of alcohol and other drugs.

*ATOD* alcohol, tobacco, and other drugs.

*Board(s)* entities responsible for licensure/certification for specific professions (e.g., nursing, counselors, social workers, physicians, etc.). State of Louisiana boards are the only accepted credentialing organizations for all personnel.

*Client/Patient/Consumer/Participant* any person assigned or accepted for prevention or treatment services furnished by a licensed facility as specified.

*Compulsive Gambling* persistent and recurrent maladaptive gambling behavior that disrupts personal, family, community, or vocational pursuits, and is so designated by a court, or diagnosed by a licensed physician, licensed social worker, licensed psychologist, or advanced practice registered nurse who is certified in mental health.

*Consultation* professional oversight, advice, or services provided under contract.

*Core Functions* the essential and necessary elements required of every abuse/addiction treatment facility.

a. *Assessment* core function in which a counselor/program identifies and evaluates an individual's strengths, weaknesses, problems, and needs for the development of the treatment plan.

b. *Case Management* core function in which services, agencies, resources, or people are brought together within a planned framework of action toward the achievement of established goals. It may involve liaison

activities and collateral contacts with other providers/facilities.

c. *Client Education* core function in which information is provided to individuals and groups concerning alcoholism and other drug abuse, positive lifestyle changes, and the available services and resources.

d. *Client Orientation* core function in which the client is informed regarding:

- i. general nature and goals of the program;
- ii. rules governing client conduct and infractions that can lead to disciplinary action or discharge from the program;
- iii. availability of services;
- iv. costs; and
- v. client's rights.

e. *Consultation with Professionals* core function in which functional relationship with counselors and other credentialed health care professionals is provided as required to assure comprehensive quality care for the client.

f. *Counseling (Individual/Group) Services* core function in which appropriate support is provided to the client by those professionals qualified to provide therapeutic services. Special skills are used to assist individuals, families, or groups in achieving objectives through:

- i. exploration of a problem and its ramifications;
- ii. examination of attitudes and feelings;
- iii. consideration of alternative solutions; and
- iv. decision making and problem solving.

g. *Crisis Intervention Services* core function in which appropriate assistance is rendered during emergencies, including 24-hour telephone coverage by a qualified counselor, to provide:

- i. telephone assistance to prevent relapse;
- ii. referral to other services; and
- iii. support during related crises.

h. *Intake* core function in which information is gathered about a prospective client. Information is given to a prospective client about the treatment facility and facility's treatment and services.

i. *Referral* core function in which appropriate services not provided by the facility are identified, and client/family is assisted to optimally utilize the available support systems and community resources.

j. *Reports and Record Keeping* core functions in which results of the assessment and treatment planning are recorded. Written reports, progress notes, client data, discharge summaries and other client-related documentation is recorded in the client record.

k. *Screening* core function in which the determination is made as to whether a client meets the program's admission criteria. Information such as the person's reason for admission, medical and substance abuse history, and other needed information, is used to determine client's need for treatment, and/or appropriateness of admission.

l. *Treatment Planning* core function in which the counselor and the client:

- i. identify and rank problems needing resolution;
- ii. establish agreed upon immediate objectives and long-term goals; and
- iii. decide on a treatment process, frequency, and the resources to be utilized.

**Core Requirements** as contained in this Chapter apply to all facilities licensed to provide substance abuse prevention, treatment, or detoxification. Sections 7401 - 7425 contain core requirements for all facilities and §7427 - §7457 contain additional requirements that apply to specific programs.

**Counselor** qualified professional (QPS or QPC) as described in this document.

**Counselor in Training (CIT)** a person currently registered with Louisiana State Board Certified Substance Abuse Counselor (LSBCSAC) Board and pursuing a course of training in substance abuse counseling including educational hours, practicum hours, and direct, on-site supervision of work experience hours by a facility-employed QPS/QPC.

**Department** the Louisiana Department of Health and Hospitals (DHH). The following is a list of pertinent sections:

a. **Health Standards Section (HSS)** Section of Bureau of Health Services Financing, DHH that surveys, licenses, and serves as the regulatory body for health care facilities in the state.

b. **Office for Addictive Disorders (OAD)** DHH office responsible for providing treatment and prevention services related to abuse/addiction disease/disorders.

c. **Office of Public Health (OPH)** DHH Office that establishes and enforces various legislative health codes.

d. **Office of Planning and Review (OPR)** DHH office which professionally reviews all floor plans and site plans prior to licensing to assure compliance with state laws and codes.

e. **Program Integrity Section (PRS)** Section of Bureau of Health Services Financing, DHH responsible for investigating fraud and abuse.

**Diagnosis** the act of identifying a disease (AA/DD) by a qualified licensed professional (physician, social worker, advanced practice registered nurse, or psychologist) based on comprehensive assessment of physical evidence [if related to diagnosis], signs and symptoms, clinical and psychosocial evidence, and client/family history.

**Doctorate-Prepared** an individual who has completed a Doctorate in social work, psychology, or counseling, but has not met the requirements for licensing by the appropriate state board.

**Exploitation** act or process to use (either directly or indirectly) the labor or resources of a client for monetary or personal benefit, profit, or gain of another individual or organization.

**Facility** provider of services, including all employees, consultants, managers, owners, and volunteers as well as premises and activities.

**Joint Ventures** facilities funded/operated by both public and private sources. Joint ventures are classified as private entities.

**LSBCSAC** Louisiana State Board Certified Substance Abuse Counselor.

**Masters-Prepared** an individual who has completed a Masters Degree in social work or counseling, but has not met the requirements for licensing by the appropriate state board.

**Medication Administration** preparation and giving of legally prescribed individual dose to client; observation and monitoring of client/client response to medication.

**Medication Dispensing** compounding, packaging, and/or giving of legally prescribed multiple doses to client.

**Medication-Prescription (Legend)** medication that requires an order from a licensed practitioner and that can only be dispensed by a pharmacist on the order of a licensed practitioner and requires labeling in accordance with R.S. 37:1161 et seq.

**Medication Nonprescription** medication which can be purchased over-the-counter without a licensed practitioner's order.

**Minor** any person under the age of 18.

**Office of State Fire Marshal (OSFM)** establishes and enforces various legislative building codes.

**Off-Site Operation** either autonomous or semi-autonomous, that is related to parent facility and located in same or adjacent parish.

**On Call** immediately available for telephone consultation and less than one hour from ability to be on duty.

**On Duty** scheduled, present, and awake at the site to perform job duties.

**Primary Prevention** focus on reducing the onset of incidences (rate of occurrences) of alcohol, tobacco, and other drug (ATOD) use by non-users, preventing the development of ATOD use problems, and enhancing individual strengths as an inoculant against ATOD use.

**Program** a specific group of therapeutic services designed to deliver treatment/prevention to a defined client population.

**Public** owned and operated by federal, state, or local government.

**Sexual Exploitation** a pattern, practice, or scheme of conduct that can reasonably be construed as being for the purpose of sexual arousal or gratification or sexual abuse of any person.

**Site/Premises** a single identifiable geographical location owned, leased, or controlled by a facility where any element of treatment is offered or provided. Multiple buildings may be contained in the license only if they are connected by walk-ways and not separated by public street or have different geographical addresses.

**Staff** individuals who provide services for the facility in exchange for money or other compensation, including employees, contract providers, and consultants.

**Standards** policies, procedures, rules, and other guidelines (i.e., standards of current practice) contained in this Chapter for the licensing and operation of substance abuse/addiction treatment facilities.

**Substance Abuse/Addiction Treatment/Prevention Facility** any facility which presents itself to the public as a provider of services related to prevention and/or treatment of the abuse/addiction of controlled dangerous substances, drugs or inhalants, alcohol, problem or compulsive gambling, or a combination of the above. Facility shall be licensed to provide treatment to clients diagnosed with abuse/addiction disease/disorders (AADD) and provide support and prevention intervention to families, the public,

and to those individuals identified as having greater than normal risk for developing abuse/addiction disease/disorders.

*Supervision* occupational oversight, responsibility and control over employee(s)/service delivery by critically watching, monitoring, and providing direction.

*Treatment Level* a group of treatments/services designed to positively impact a specific type/degree of abuse/addiction.

*Unethical Conduct* conduct prohibited by the ethical standards adopted by DHH, state or national professional organizations or by a state licensing agency.

*Unprofessional Conduct* any act or omission that violates commonly accepted standards of behavior for individuals or organizations.

*Variance* or *Waiver* administrative decision by HSS or DHH secretary or designated personnel qualified to make the decision that failure (for limited time period), to meet a Minimum Standard cannot potentially cause harm to any client/citizen or interfere with quality treatment. Facility shall post all variances/waivers in conspicuous place.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1057.1 - 9, redesignated R.S. 40:1058.1 - 9.

HISTORICAL NOTE: Promulgated by Health and Human Resources Administration, LR 2:154 (May 1976), amended by the Department of Health and Human Resources, Office of Hospitals, Bureau of Substance Abuse, LR 3:16 (January 1977), amended by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 12:26 (January 1986), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 26:

### §7403. Licensing

A. General. Any facility which presents itself to the public as a provider of services related to the prevention and/or treatment for abuse/addiction of controlled dangerous substances, drugs or inhalants, alcohol, problem or compulsive gambling, or a combination of the above is required to have a valid and current license prior to admitting any client.

B. Compliance. Each licensed facility must comply with the minimum requirements in order to remain licensed. In addition, each facility is required to have a copy of the minimum standards on-site, and all administrative and professional staff should be familiar with contents of this rule.

#### C. Exemptions

1. Hospitals, nursing homes, and federally-owned facilities are exempt from licensure.

2. State facilities are exempt from the following general requirements:

- a. licensure fees;
- b. budgetary/audit requirements;
- c. disclosure of ownership forms;
- d. planning, location requirements;
- e. governing body regulations; and
- f. liability insurance.

D. Adherence Requirements. Each facility shall adhere to requirements throughout the period of licensure. Any period of non-compliance may result in sanctions, denials, or corrective action.

E. Variance. Any variance granted by HSS shall:

1. be in writing;

2. cannot be retroactive;
3. be granted for a specific period of time, but less than one year; and
4. be listed on the facility license.

F. Off-sites. Related facilities may share a name with the primary facility, if a geographic indicator is added to the end of the facility name. All facilities must have a separate license from that issued to the parent facility.

1. Additional locations shall operate in the same or adjacent parish and shall meet the following conditions:

- a. OSFM/OPH approval;
- b. adequate professional staff to comply with all standards;
- c. adequate administrative and support staff to comply with all standards;
- d. personnel records may be housed at parent facility;
- e. client records may be housed at parent facility;
- f. telephone system to forward calls to parent facility;
- g. initial survey is required prior to opening, but annual/renewal survey may be by attestation;

2. License to operate at off-site location will be issued from HSS when the following criteria are met:

- a. adequate professional staff to operate at two or more locations;
- b. identified need for services by OAD; and
- c. submission of request for opening off-site and completed application and payment of applicable fees.

3. Treatment services shall be equal at all locations, however, off-site facilities may refer clients to parent facility to supplement core functions only when client is not expected to endure excessive expense or hardship to obtain required services.

4. Twenty-four hour off-site facilities shall meet and maintain compliance with all requirements for which the facility license is issued.

5. Exception: Primary Prevention Programs may provide educational services at various public facilities, provided that the primary site is licensed.

G. License Designation. A facility shall have written notification of restrictions, limitations, and services available to the public, community, clients, and visitors.

1. Twenty-Four-Hour Facilities. (May be designated for adults, adolescent, or parents/dependent children.)

- a. Detoxification Facilities
  - i. Medically Supported
  - ii. Non-medical (Social)
- b. Primary Treatment Facilities
  - i. In-patient Treatment
  - ii. Residential Treatment
- c. Community-Based Treatment Facilities
  - i. Halfway House
  - ii. Three Quarter House
  - iii. Therapeutic Community (Long Term Residential)

#### 2. Outpatient Facilities

- a. Outpatient Counseling
  - b. Intensive Outpatient Treatment
  - c. Opiate Addiction Treatment
3. Primary Prevention Programs ( Non-treatment Designation)

- a. Youth Based Programs
- b. Community Education Only

4. Additional Designations (Conjointly approved by OAD/HSS in writing)

H. Services. The services shall be provided in accordance with license designation.

1. Any additional services provided on the premises shall be identifiable to the public as separate and apart from the licensed program.

2. Clients/families must be notified in writing upon admission when client will be housed in any building not covered in the license issued by DHH/HSS.

I. License Types.

1. Full. A full license is issued only to those agencies that are in compliance with the minimum standards and all other licensure requirements. The license is valid until the date of expiration unless revoked or suspended prior to the date of expiration, or denied renewal.

2. Provisional. A provisional license is issued to those facilities that are not in compliance with the minimum standards when the termination of a license will occur if systemic changes fail to correct identified problems, provided that cited deficiencies are not detrimental to the health and safety of clients. A provisional license is valid for six months or until a designated termination date. Any license involved in an appeal process is automatically considered provisional.

J. Display of License. The current license shall be displayed on-site at each facility in full view of all clients and/or visitors. Any license issued by DHH supersedes previously issued licenses issued for the facility to operate under this chapter and deems those previously issued as invalid. Any facility displaying and/or using an invalid or altered license will be sanctioned.

K. Notification of Change Requirements. Any change listed below that is not reported in writing to HSS within 10 days is delinquent and subject to sanction. Written approval of changes by DHH is required to remain in compliance with licensure standards.

1. Change of Ownership

a. Include a copy of bill of sale, licensure fee, disclosure of ownership form, new application form, and information about relocation, name change, etc.

b. License is nontransferable; new owners must apply for a new license.

2. New Construction and Renovations. All plans must have prior approval of the Office for State Fire Marshal and DHH Office of Planning and Review.

3. Address Change. Change of address requires issuance of replacement license. Prior approval is required, and is based on submitting requested information to HSS.

4. Change of Services. An application packet appropriate to the new service is required. An initial survey may be required prior to issuance of new license at the discretion of HSS.

5. Hours of Operation. Written approval by HSS is required in advance of the change.

L. Cessation of Business. If at any time the facility decides to cease operations then the facility is responsible for surrendering the license and notifying HSS of the date of cessation of services and the permanent location of the records.

1. All active clients and pertinent information shall be transferred/referred to appropriate treatment facilities.

2. Written notification with license shall be sent to HSS within five working days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1057.1 - 9, redesignated R.S. 40:1058.1 - 9.

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**§7405. Fees**

A. General. All fees must be submitted to DHH in the form of a company or certified check or money order, and is to be made payable to the Department of Health and Hospitals (DHH). All fees are nonrefundable and nontransferable.

1. Fee Amounts. The current fee schedule is available upon request.

2. Initial Application. The fee for the initial application process and initial licensure shall be submitted prior to consideration of the license application.

3. Annual Renewal. The fee is payable in advance of issuance of a renewal license.

4. Change Fees. A fee must accompany any request requiring the issuance of a replacement license.

B. Late Fees. Any fee for renewal, or any other fee, is delinquent after the due date and an additional fee shall be assessed beginning on the day after the date due. No license will be issued until all applicable fees are paid.

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**§7407. Initial Licensure**

A. Application Procedure. This process assures that the facility is capable of organizing, planning and carrying out an operation to provide the 12 core functions of counseling and other therapeutic services as designated on license. The entire application process must be completed within 90 days from the date of the original submission of the application in order to be approved. A completed application packet shall contain:

1. letter of intent that includes:

- a. proposed date of operation;
- b. program mission;
- c. program description;

2. written Plan of Professional Services including a list of the 12 core functions of AA/DD treatment and a facility plan to furnish those services.

3. current application, disclosure forms and other forms with application fee.

4. written approval from the Office of Planning and Review for the proposed facility, if required.
5. a letter-size sketch of the floor plan.
6. jurisdictional approvals as required by:
  - a. Office of Public Health;
  - b. Office of State Fire Marshal;
  - c. municipal zoning and other approvals as applicable;
  - d. others, if necessary, (e.g., State Methadone Authority);
7. proof of general and professional liability insurance of at least \$500,000.
8. governing body information including names, addresses, telephone numbers of each member;
9. disclosure in writing 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;
10. organizational chart for all professional level personnel.

B. Exceptions. If a requirement is not applicable to the program being licensed, the applicant may list and mark "not applicable." HSS can assist by telephone, if additional answers are needed.

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#### **§7409. Survey**

##### A. General

1. All surveys shall be unannounced and may be in conjunction with other agency personnel and/or personnel from other local, state or federal agencies.
2. Any facility that cannot be surveyed when scheduled will be sanctioned unless prior arrangements are approved by HSS and will not be licensed until all fines are paid.

##### B. Initial

1. On-site survey of all aspects of the operation is required prior to the admission of any client for treatment at the facility.
2. DHH shall determine whether the facility is capable of becoming operational as indicated by compliance with all accepted standards of completed preparations and employment of all personnel, as well as securing all jurisdictional approvals.
3. Facility must become fully prepared for survey within six months of completion of application process.
4. Facility shall be staffed to admit clients and all personnel shall have received orientation.
5. Facility shall be fully prepared to begin admitting clients before requesting an on-site survey.
6. Facility shall meet all requirements of the Minimum Standards.

- a. If survey findings indicate that facility has minor violations, a corrective plan of action shall be submitted before issuance of a license.
- b. All client oriented corrections shall be completed before DHH issues a license.

c. All unlicensed direct care workers must have criminal history checks with appropriate action taken prior to initial survey.

7. Any facility that is not recommended for licensure following the on-site survey shall be required to submit another application fee and application packet for review prior to requesting a subsequent on-site survey.

8. No client may be admitted until the survey has been completed and facility has been notified that it is approved to admit clients. Health Standards surveyor shall notify the facility verbally as to whether it is appropriate to begin admitting clients or to await further direction by DHH.

C. Annual Survey. An on-site survey of all aspects of the facility is performed annually to assure and promote continuous adherence to standards.

D. Complaint Investigations. DHH shall determine the type and extent of investigation to be made in response to complaints in accordance with R.S. 40: 2009.13 et seq.

1. May be an internal investigation with a report submitted to DHH/HSS.

2. May be on-site focused or complete survey by DHH/OAD and/or DHH/HSS and other local, federal, and state agencies as appropriate.

E. Follow-up Surveys. On-site visit, or request for submission of documentation for desk review to assure that corrective actions have been completed as alleged in the submitted plan of corrections and/or to assure continued compliance between surveys.

F. Survey Results. All survey results become available for public inspection 60 days after the survey or on the date that an acceptable plan of correction is received from the facility, whichever is sooner. If violations of Minimum Standards are:

1. minor and do not directly involve client care, the facility may be allowed up to 60 days to make all necessary corrections;
2. not minor or if they directly affect client care, adverse action shall be implemented.

G. Plan of Corrections. Written allegations of correction are submitted from facility to HSS to describe actions taken by the facility in response to cited violations.

##### 1. Required Components/Elements

- a. Actions taken to correct any problems caused by deficient practice directed to a specific client.
- b. Actions taken to identify other clients who may also have been affected by deficient practice, and to assure that corrective action will have positive impact for all clients.
- c. Systemic changes made to insure that deficient practice will not recur.
- d. Quality assurance plan developed to monitor to prevent recurrence.

##### 2. Miscellaneous

- a. All components of the corrective action plan must be specific and realistic, including the dates of completion.

b. Plan must be submitted as directed by HSS staff, usually within 10 days of the date of the survey, or the provider may be sanctioned.

c. Corrections must be completed within 60 days of survey unless directed to correct in less time due to danger or potential danger to clients/staff.

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#### **§7411. Annual License Renewal**

A. License must be renewed at least annually. It is the responsibility of the facility to:

1. request a renewal packet from HSS if one is not received at least 45 days prior to license expiration;
2. complete all forms and return to HSS at least 30 days prior to license expiration;
3. submit annual licensure fee, if required, with renewal packet; and
4. submit proof of insurance with renewal packet.

B. Annual license renewal for Primary Prevention programs may be accomplished by attestation provided that:

1. the facility has had three consecutive years of deficiency-free surveys, and
2. Office for Addictive Disorders recommends attestation in writing.

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#### **§7413. Adverse Actions**

A. General. DHH reserves the right to suspend, deny (initial or renewal), or revoke any license at the discretion of the secretary or his/her designee. Facility owners and staff shall be referred to other entities, such as boards or state or federal enforcement agencies, when there is suspicion of illegal, unprofessional or unethical behavior. Any involuntary termination of licensure or voluntary termination to avoid adverse action automatically disqualifies that facility and those associated with the facility from applying for licensure for a period of at least one year.

B. Denial of Initial License. Denial of initial licensure shall be in accordance with R.S. 40:1058.5(A). Additionally, DHH shall not accept application for an additional facility with common owners, managers, or staff unless the original facility is in full compliance for one year without interruption and is not under investigation by any other agency.

C. Revocation or Denial of Renewal of License. License may be revoked or denied for the following nonexclusive reasons: [See also R.S. 40:1058.5(B)]

1. cruelty or indifference to the welfare of the clients;
2. misappropriation or conversion of the property of the clients;

3. violation of any provision of this part or of the minimum standards, rules, and regulations, or orders promulgated hereunder:

a. serving more clients in the facility than authorized by license;

b. repeated failure to adhere to rules and regulations that resulted in issuance of a provisional license or other sanction;

c. serious violation of standards or current professional standards of practice;

d. failure to submit corrective action plans for identified violations;

e. reasonable cause to suspect that client health/safety is jeopardized;

f. reliable evidence that the facility:

i. falsified records;

ii. failed to provide optimum therapy in accordance with current standards of practice; or

iii. has bribed, solicited or harassed any person to use the services of any particular facility;

g. failure to submit required fees in a timely manner;

h. failure to cooperate with survey/investigation by DHH/authorized agencies;

i. failure to employ and utilize qualified professionals;

4. permitting, aiding, or abetting the unlawful, illicit, or unauthorized use of drugs or alcohol within the facility;

5. conviction or plea of *nolle contendere* by the applicant for a felony. If the applicant is an agency, the head of that agency must be free of such conviction. If a subordinate employee is convicted of a felony, the matter must be handled administratively to the satisfaction of HSS.

6. documented information of past or present conduct or practices of the facility which are detrimental to the welfare of the clients.

D. Provisional License. As described in § 7403.

E. Appeals.

1. Notice. HHS shall give at least 30 days notice of denial of renewal or revocation of license unless DHH determines that the health and/or safety of clients is in jeopardy. In the event that DHH determines that the health and/or safety of clients is in jeopardy, clients will be removed from the facility immediately. No advance notice will be provided when health and/or safety are involved, and the facility may appeal within 30 days following the removal.

2. Administrative Reconsideration. Request must be submitted in writing to HSS (designee of DHH secretary) within 15 days of receipt of the notice of denial of renewal or revocation.

3. Administrative Appeal. Request must be submitted in writing to DHH, Office of the Secretary within 30 days of receipt of the notice of denial of renewal or revocation.

Request for administrative reconsideration does not affect time frames for requesting administrative appeal.

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**Subchapter B. Core Requirements for All Programs §7417. Organization and Administration**

**A. Administration Quality and Adequacy**

1. Facility administration shall be qualified and adequate to assure adherence to all licensing standards.

2. Qualifications shall be determined by the complexity of the services being provided.

3. Facility compliance with licensing standards shall determine adequacy of available administrative oversight.

4. Facilities shall be organized so that administrative personnel do not perform any programmatic duties and/or make clinical decisions, unless licensed/certified to make clinical decisions.

**B. Administrative Records.** Record keeping shall be in accordance with accepted standards to assure the development and implementation of facility specific policies and procedures to adhere to all licensing standards.

1. Personnel (staff providing direct care to clients)

a. Annual health screens in accordance with OPH guidelines (includes Dietary workers when applicable).

b. Actual hours of work

c. Orientation/training/in-services

d. Disciplinary actions

e. Results of criminal background checks on all direct care staff

f. Verification of professional credentials, licensure/certification and renewals

g. Job descriptions/Performance expectations

2. Administrative Operations

a. Organizational chart

b. Mission and description of services

c. Payment methods in accordance with Wage and Hour Board

d. Proof of general and professional liability insurance in the amount of at least \$500,000

e. Projected plan of operations based on the findings of the facility specific to continuous improvement program

f. Written agreements with other entities to assure adherence to licensing standards and continuity of care

g. Written designation of facility administrator and clinical services director. Facility may have other job titles as desired, however, the above two positions are required for each facility.

3. **Governing Body.** All private providers shall have an identifiable governing body composed of adults who have legal authority over the policies and activities of the facility. Responsibilities include:

a. governing of all facility operations;

b. documentation to identify all members including name, address, telephone numbers with current updates as indicated;

c. maintenance of written minutes of all meetings of the governing body, including, but not limited to, date, time, location, participants, topics discussed, decisions reached, and actions taken, committee reports, and any other pertinent information;

d. annual documented review and appropriate actions on all policies, procedures, facility rules, goals, grievances, budget, internal and external evaluations, (including all survey findings);

e. codes of conduct to ensure professional, ethical and legal operations;

f. facility practices that ensure employees have necessary administrative support to provide therapeutic milieu for clients.

**C. Ownership.** Type of ownership must be identified.

1. **Public** Government entities (local, state, and federal)

2. **Private** For profit or nonprofit

a. individual

b. corporation (individual, group of individuals, or publicly-owned stock)

c. church

d. council/organization

e. joint ventures/contractors

**D. Facility Protocols.** Each facility shall establish facility-specific, written policy and implement such policy in these areas.

1. **General**

a. Procedures to ensure the health, safety, and well-being of clients.

b. Procedures to ensure that clients receive optimum treatment in order to achieve recovery.

c. Criteria to assure access to care without over-utilization of services.

d. Protocols to assure uniform and quality assessment, diagnosis, evaluation, and referral to appropriate level of care.

e. Procedures to assure operational capability and compliance.

f. Procedures to assure that only qualified personnel are providing care within the scope of the core functions of substance abuse treatment.

g. Procedures to assure that delivery of services shall be cost-effective and in conformity with current standards of practice.

h. Procedures to assure confidentiality of client records.

2. **Continuous Quality Improvement Program (CQIP).** Facility shall:

a. have ongoing programs to assure that the overall function of the clinic is in compliance with federal, state, and local laws, and is meeting the needs of the citizens of the area, as well as attaining the goals and objectives developed from the mission statement established by the facility;

b. focus on improving patient outcomes and patient satisfaction;

c. have objective measures to allow tracking of performance over time to ensure that improvements are sustained;

d. develop/adopt quality indicators that are predictive of desired outcomes or are outcomes that can be measured, analyzed and tracked;

e. identify its own measure of performance for the activities it identifies as priorities in quality assessment and performance improvement strategy;

f. conduct distinct successful improvement activities proportionately to the scope and complexity of the clinic operations;

g. immediately correct problems that are identified through its quality assessment and improvement program that actually or potentially affect the health and safety of the clients;

h. make an aggressive and continuous effort to improve overall performance of clinic and personnel;

i. use the process of improvement (identification of client care and service components; application of performance measures; and continuous use of a method of data collection and evaluation) to identify or trigger further opportunities for improvement; and

j. use annual internal evaluation procedure to collect necessary data to formulate plan and quarterly meetings of staff committee (at least three individuals) to assess and choose which CQIP activities are necessary and set goals for the quarter, to evaluate the activities of the previous quarter, and to implement immediately any changes that would protect the clients from potential harm or injury.

3. Research or Non-traditional Treatment Modalities. Approval for exceptional procedures, treatment modalities, etc., shall be approved in accordance with federal and state guidelines.

4. Operational Requirements. The facility shall:

a. be fully operational for the business of providing substance abuse/addiction prevention/treatment during normal business hours and after hours as indicated/approved on original application or change notification approval;

b. be available as a community resource, and maintain current schedule of area support groups;

c. share space, telephones, or personnel with other entities only in compliance with R.S. 40: 2007.

d. have active clients who are receiving services at the time of any survey after the initial survey;

e. be able to accept referrals during hours of operation as specified on licensure application;

f. utilize staff to provide services based on the needs of their current caseload of clients;

g. have required staff on duty at all times during operational hours.

E. Required Facility Reporting. The facility director shall verbally/facsimile report these incidents to HSS within 24 hours of discovery. State-operated facilities are also required to follow OAD reporting policy:

1. fire and/or natural disasters;

2. any substantial disruption of program operation;

3. any death or serious injury of a client that may potentially be related to program activities; and

4. violations of laws, rules, and professional and ethical codes of conduct by facility personnel/volunteers.

F. Required Postings. The facility shall post a legible copy of the following documents in full view of clients, visitors, and employees:

1. the age appropriate Client Bill of Rights;

2. escape routes;

3. facility specific rules and responsibilities and grievance procedure;

4. current license and variances;

5. current activity schedule;

6. current survey findings.

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#### **§7419. Personnel Requirements**

A. Standards of Conduct

1. The facility, and all personnel in accordance with individual professional licensure, shall:

a. protect the health, safety, rights, and welfare of clients;

b. provide services designated on license;

c. adhere to all applicable laws, regulations, policies, and procedures;

d. maintain required licenses, permits and credentials; and

e. adhere to professional and ethical codes of conduct.

2. Neither the facility nor any of its personnel shall:

a. commit an illegal, unprofessional or unethical act;

b. assist or knowingly allow another person to commit an illegal, unprofessional, or unethical act;

c. knowingly provide false or misleading information;

d. omit significant information from required reports and records or interfere with their preservation;

e. retaliate against anyone who reports a violation or cooperates during a review, inspection, investigation, hearings or related activity; or

f. interfere with Department reviews, inspections, investigations, hearings, or related activity. This includes taking action to discourage or prevent someone else from cooperating with the activity.

B. General

1. Referrals. Facility personnel shall report violations of laws, rules, and professional and ethical codes of conduct to HSS and to appropriate licensing board when applicable. The facility shall maintain records and have written policies governing staff conduct and reporting procedures that comply with this §7419.

2. Staffing. A facility shall employ sufficient and qualified staff to meet the requirements and responsibilities required by licensure as well as the needs of each client being served.

3. Qualifying Experience. Any experience used to qualify for any position must be counted by using one year equals 12 months of full-time work. At no time will any professional staff be considered full time at two facilities.

4. Caseloads. All counselors (including full time, part time, and those who also have other duties) must have

caseloads appropriate to available time, which shall be determined by the needs of the active clients and the level of treatment being provided.

5. Multiple Positions. A person may hold more than one position within the facility if that person is qualified to function in both capacities, and the required hours for each job are separate and apart for each position.

6. Credential Verification. Facility administration is responsible for assuring that all credentials are from accredited institutions, legal, and verified to deter the fraudulent use of credentials.

7. Clinical Services Director. A qualified professional supervisor or qualified professional counselor shall be designated, in writing, as responsible for supervising all treatment services and programs.

8. Contract Staff Services. Formal written agreements with professionals or other entities to provide services which may or may not be directly offered by facility staff are required for contract services. Both parties shall review and document review of each agreement annually.

#### C. Training

1. Orientation. Each employee shall complete at least eight hours of orientation prior to providing direct client care/contact. The content of the basic orientation provided to all employees at the time of employment with annual review shall include the following:

- a. policies/procedures and objectives of the facility;
- b. duties and responsibilities of the employee;
- c. organizational/reporting relationships;
- d. ethics and confidentiality;
- e. clients rights;
- f. standards of conduct required by the facility;
- g. information on the disease process and expected behaviors of clients;
- h. emergency procedures including disaster plan, evacuation;
- i. principals and practices of maintaining a clean, healthy and safe environment;
- j. additional information as appropriate to job duties, type of client, etc;
- k. universal precautions;
- l. violent behavior in the workplace;
- m. abuse/neglect;
- n. overview of Louisiana licensing standards;
- o. prevention overview, and
- p. basic emergency care of ill or injured clients until trained personnel can arrive.

2. In-Service. This educational offering shall assist the direct care/contact workers to provide current treatment modalities, and serve as refresher for subjects covered in orientation. Documentation of attendance for at least three hours per quarter is required. Additional educational programs are encouraged.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1057.1 - 9, redesignated R.S. 40:1058.1 - 9.

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Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 26:

### §7421. Personnel Qualifications/Responsibilities

#### A. Qualified Professional Supervisor (QPS)

##### 1. Qualifications

a. The following professionals who are currently registered with their respective Louisiana board:

- i. licensed psychologist
- ii. Licensed clinical social worker

b. The following professionals who are currently registered with their respective Louisiana boards and who can demonstrate two years of professional level counseling experience, or one year of professional level substance abuse counseling, or 90 clock hours (six semester hours) of substance abuse training post-certification, including the twelve core functions from an accredited college or university, or an educational provider approved by DHH may function as QPS. Documentation shall be available from the facility upon request. The professionals eligible to become QPSs are listed below:

- i. board certified substance abuse counselor (BCSAC) or (LASACT)
- ii. licensed professional counselor (LPC)
- iii. licensed physician (MD)
- iv. registered nurse (RN)
- v. board-certified compulsive gambling counselor (BCCGC)
- vi. Masters-prepared social worker/counselor
- vii. Masters-prepared counselor under the supervision of a licensed psychologist or licensed clinical social worker (LCSW)

##### 2. Responsibilities. The QPS shall:

- a. provide direct client care utilizing the twelve core functions of the substance abuse counseling and/or specific functions related to professional license;
- b. serve as resource person for other professionals counseling substance abuse clients;
- c. attend and participate in care conferences, treatment planning activities, and discharge planning related to primary caseload and/or clients of professionals being supervised;
- d. provide on-site and direct professional supervision of treatment and any counselor-in-training, including but not limited to, activities such as individual/group counseling, or educational presentations;
- e. provide oversight and supervision of such activities as recreation, art/music, or vocational education, to assure compliance with accepted standards of practice;
- f. function as patient advocate in all treatment decisions affecting the client;
- g. be designated as the clinical services supervisor unless other QPSs are employed and available at the facility) and/or actively supervise QPC if program does not require full-time supervisor;
- h. assure that facility adheres to rules and regulations regarding all substance abuse treatment, e.g., group size, caseload, referrals, etc.;
- i. provide only those services which are appropriate to their profession.

#### Qualified Professional Counselor (QPC)

1. Qualifications. A QPC is a professional who is employed in the treatment of abuse/addiction disorders and

who is currently licensed/certified by the appropriate Louisiana board as one of the following professionals:

- a. board certified substance abuse counselor (BCSAC) or (LASACT)
- b. Licensed clinical social worker (LCSW)
- c. licensed professional counselor (LPC)
- d. licensed psychologist
- e. licensed physician (MD)
- f. registered nurse (RN)
- g. board-certified compulsive gambling counselor (BCCGC)
- h. Masters-prepared social worker/counselor
- i. Masters-prepared counselor under the supervision of a licensed psychologist or licensed clinical social worker (LCSW)

2. Responsibilities. The QPC shall:

- a. provide direct care to clients utilizing the 12 core functions of substance abuse counseling and may serve as primary counselor to specified caseload;
- b. serve as resource person for other professionals and paraprofessionals in their specific area of expertise;
- c. attend and participate in client care conferences, treatment planning activities, and discharge planning;
- d. provide on-site and direct professional supervision of any paraprofessional or inexperienced professional;
- e. function as the patient advocate in all treatment decisions affecting the client;
- f. prepare and write notes/other documents related to client recovery, e.g. assessment, progress notes, treatment plans, etc.; and
- g. provide only those services that are appropriate to their profession.

C. Board Certified Prevention Specialist (BCPS)

1. Qualifications. Prevention Specialists shall be certified in accordance with requirements promulgated by the LSBCSAC.

2. Responsibilities:

- a. program coordination;
- b. education and training;
- c. community organization;
- d. public policy;
- e. planning and evaluation; and
- f. professional responsibility.

D. Counselor in Training (CIT)

1. Qualifications:

- a. registered with the professional licensing board and in good standing at all times;
- b. actively pursuing certification at all times; and
- c. designated in writing as CIT by the facility and performing according to a written training plan under the auspices of the facility.

2. Responsibilities. The CIT shall:

- a. provide direct client care utilizing the core functions of substance abuse counseling only under the on-site supervision of facility employed QPS/QPC.
- b. not identify nor represent himself/herself as counselor.
- c. not perform any duties of counselor independently, without on-site supervision of facility employed QPS/QPC.

d. never identify themselves as a consultant to any substance abuse facility.

3. Exceptions: CITs who have documented evidence of at least 20 hours of training (including orientation and the 12 core functions of substance abuse counseling) and 60 hours of direct supervision by QPS/QPC may perform counseling functions when the QPS/QPC is on duty or on-call and available for immediate assistance if needed.

E. Prevention Specialist in Training (PSIT)

Qualifications:

- a. current registration with the professional licensing board and in good standing at all times;
- b. actively pursuing certification at all times, and
- c. designated in writing as PSIT by facility and performing in accordance with a written training plan under the auspices of the facility.

Responsibilities. PSITs shall:

provide direct client care utilizing the standards developed by the professional licensing board only under the direct supervision of Prevention Specialist and/or QPC/QPS.

provide example for youth based group participants of clean and sober living.

Support Professional Staff. Support professional staff includes employees, consultants, contract employees, or volunteers who provide services in the capacity of their profession, including but not limited to, pharmacists, dietitians, physicians, nurses, social workers, teachers, counselors, or psychologists.

1. Qualifications:

- a. currently unencumbered license/registration with appropriate Louisiana Board (may be approved specifically by licensing Board, if encumbered), and
- b. a professional as recognized by the certifying entity, rather than assistant, aide, technician, associate, etc.

2. Responsibilities:

- a. those within their respective board's delineated scope of practice only.
- b. in-service, staff training, consultation to paraprofessionals and professionals and direct supervision, as needed to improve the overall quality of care being provided.

G. Volunteer

1. Qualifications. Volunteers must be:

- a. appropriately screened and supervised to protect clients and staff;
- b. oriented to facility, job duties, other pertinent information;
- c. appropriately trained to meet requirements of duties assigned;
- d. given a job description or written agreement; and
- e. identified as volunteers.

2. Responsibilities:

- a. direct care activities only when qualified facility personnel present;
- b. errands, recreational activities;
- c. individual assistance to support services; and
- d. other appropriately assigned duties.

H. Medical Director. Every facility licensed shall have a designated medical director. Primary prevention programs are not required to designate a medical director.

1. Qualifications. The medical director shall have a current, valid license to practice medicine in Louisiana.

2. Responsibilities:

a. provide services required by facility to meet the Standards.

b. provide oversight for facility policy/procedure and staff regarding the medical needs of the clients being served in accordance with the current standards of medical practice; and

c. retain ultimate responsibility for directing the specific course of medical treatment for all clients.

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**§7423. Health and Safety**

A. Infection Control

1. Facility shall protect staff, clients, and visitors from the potential/actual harm of infectious disease by the following policies and procedures:

a. Universal Precautions. Education, practice, and implementation shall be applied.

b. Infection control program to report, evaluate, and maintain documentation pertaining to the spread of infectious disease, including data collection and analysis, corrective actions, and assignment of responsibility to designated medical staff person.

c. Strict adherence to all sanitation requirements.

2. Facility shall establish and maintain a clean and neat environment by the implementation of the following housekeeping policies and procedures:

a. Supplies/equipment shall be available to staff/clients.

b. Consistent and constant monitoring and cleaning of all areas of the facility shall be practiced.

c. Facility may contract for services necessary to maintain a clean and neat environment.

d. Directions shall be posted for sanitizing both kitchen and bathroom areas.

3. Domestic animals shall be:

a. properly vaccinated; and

b. managed in a way consistent with the goals of the program and the needs of the client, including those with allergies.

B. Sanitation

1. Food and waste shall be stored, handled, and removed in a way that will not spread disease, cause odor, or provide a breeding place for pests.

2. If there is evidence of pests, the facility shall contract for pest control.

3. Poisonous, toxic and flammable materials shall be labeled, stored, and used safely.

C. Safety

1. Environmental

a. The entire facility, including grounds, buildings, furniture, appliances, and equipment, shall be structurally

sound, in good repair, clean, and free from health and safety hazards.

b. The facility shall comply with Americans with Disabilities Act (ADA).

c. The environment shall enhance client dignity and confidentiality.

d. The facility shall have adequate space, furniture, and supplies for the services described in the program description, including:

i. an adequate number of accessible drinking units;

ii. an adequate number of sanitized non-disposable or disposable hot/cold cups;

iii. clean, comfortable and appropriately furnished areas for various activities.

e. The facility shall have private counseling space. Staff shall have office space that is not required for other simultaneous activities.

f. The facility shall prohibit weapons of any kind on-site.

2. Evacuation/First Aid. The facility shall respond effectively during a fire or other emergency. Every program shall:

a. have emergency evacuation procedures that include provisions for the handicapped;

b. hold fire drills on each shift at least quarterly and correct identified problems promptly;

c. be able to clear the building safely and in a timely manner at all times;

d. post exit diagrams conspicuously throughout the program site;

e. post emergency numbers by all phones; and

f. have adequate first aid supplies that are visible and easy to access at all times.

3. Facility shall take all precautions possible to protect the staff, clients and visitors from accidents of any nature.

4. Facility shall have a written facility specific disaster plan, and staff shall be familiar with the contents of the plan as well as the location.

D. Emergency Care. Outpatient, Prevention and Education Programs may be exempt from these requirements if access to Emergency Medical Services is less than ten minutes.

1. At least one employee on site at each facility shall be certified in cardiopulmonary resuscitation and airway obstruction treatment and have training in dealing with out-of-hospital accidents and medical emergencies until emergency medical personnel and equipment can arrive at facility.

2. Facilities that have licensed nurses/physicians on duty during all hours of operation are exempt from this requirement.

E. Physical Plant Requirements

1. Required Inspections

a. The facility shall pass all required inspections and keep a current file of reports and other documentation needed to demonstrate compliance with applicable laws and regulations. The inspections must be signed, dated, and free of any outstanding corrective actions. The following inspections are required:

i. annual fire marshal inspection;

- ii. annual inspection of the alarm system by a licensed contractor;
  - iii. quarterly fire alarm system test by facility staff;
  - iv. annual kitchen inspection by Office of Public Health;
  - v. gas pipe pressure test once every three years by the local gas company or a licensed plumber;
  - vi. annual inspection and maintenance of fire extinguishers by personnel licensed or certified to perform those duties; and
  - vii. regular inspections of elevators.
- b. The following documentation shall be on file in facility:
- i. certificate of occupancy as required by local authorities;
  - ii. DHH approval of the water supply/system;
  - iii. DHH approval of the sewage system; and
  - iv. documentation that the liquefied petroleum supply has been inspected and approved.

## 2. Fire Notification/Protection Systems

- a. A fire detection, alarm, and communication system required for life safety shall be installed, tested, and maintained in accordance with the facility's occupancy and capacity classifications.
- b. Fire alarm systems shall be installed by agents registered with Office of State Fire Marshal.
- c. Alarms shall be loud enough to be heard above normal noise levels.
- d. Fire extinguishers shall be mounted throughout the facility as required by code and approved by Office of State Fire Marshal.
  - i. Each laundry and walk-in mechanical room shall have at least one portable A:B:C extinguisher, and each kitchen shall have at least one B:C fire extinguisher.
  - ii. Each fire extinguisher shall have the required maintenance service tag attached.
- e. Staff shall conduct quarterly inspections of fire extinguishers for proper location, obvious physical damage, and a full charge on the gauge.

## 3. Exterior Space Requirements. A provider shall:

- a. ensure that all structures on the grounds of the facility that are accessible to clients are maintained in good repair and are free from an excessive hazard to health or safety;
- b. maintain the grounds of the facility in an acceptable manner and ensure that the grounds are free from any hazard to health or safety;
- c. store garbage and rubbish securely in non-combustible, covered containers that are emptied on a regular basis;
- d. separate trash collection receptacles and incinerators from client activity areas and locate all containers so as to avoid being a nuisance to neighbors;
- e. keep fences in good repair;
- f. fence off or have natural barriers around areas determined to be unsafe, including steep grades, cliffs, open pits, swimming pools, high voltage boosters, or high speed roads.

## 4. Interior Space Requirements

- a. Group Rooms. Seating for each client shall be provided with appropriate furnishings.

- b. Leisure/Craft Areas. Materials appropriate to the clients being treated at the facility shall be stocked.

## c. Bathrooms. Minimum facilities include:

- i. adequate operational fixtures to meet Louisiana State Plumbing Code. All fixtures must be functional and have the appropriate drain and drain trap to prevent sewage gas escape back into the facility;
  - ii. an adequate supply of hot water for the number of clients and the program schedule. Hot water temperature at point of service to client shall be between 105 and 120 degrees Fahrenheit;
  - iii. toilets shall have seats and be located to allow access without disturbing other clients during sleeping hours and/or treatment sessions;
  - iv. adequate supply of toilet paper, towels, and soap;
  - v. doors to allow for individual privacy;
  - vi. external emergency release mechanism;
  - vii. safe and adequate supply of cold running water;
  - viii. safety mirrors attached to the walls at convenient heights and other furnishings necessary to meet the clients' basic hygiene needs;
  - ix. functional toilets, wash basins, and other plumbing or sanitary facilities which shall be maintained in good operating condition, and shall be kept free of any materials that might clog or otherwise impair their operation.
- d. Administrative and Counseling Space
- i. Administrative office(s) for records, secretarial work and bookkeeping shall be separate and secure from client areas.
  - ii. Space shall be designated to allow for private discussions and counseling sessions.
- e. Doors and Windows. Outside doors, windows and other features of the structure necessary for safety and comfort of clients shall be secured for safety within 24 hours after they are found to be in a state of disrepair. Total repair should be effected as soon as possible.
- i. A provider must have insect screening for all opened windows. This screening shall be readily removable in emergencies and shall be in good repair.
  - ii. All doors can be readily opened from both sides.
  - iii. All windows open to an outside view or a patio/porch area and are available for use as an alternate means of escape, if needed.
- f. Storage. A provider shall:
- i. ensure that there are sufficient and appropriate storage facilities;
  - ii. secure all potentially harmful materials.

## 5. Exits

- a. Exit doors and routes shall be lighted and unobstructed at all times.
- b. There shall be an illuminated "exit" sign over each exit. Where the exit is not visible, there shall be an illuminated "exit" sign with an arrow pointing the way.
- c. Rooms for 50 or more people have exit doors that swing out.
- d. No door may require a key for emergency exit. Locked facilities shall have emergency exit door releases as described in the Life Safety Code and/or approved by the Office of State Fire Marshal.

e. Windows shall provide a secondary means of escape.

f. Every building shall have at least two exits that are well separated.

g. Every multiple-story building shall have at least two fire escapes (not ladders) on each story that are well separated. Fire escapes shall:

- i. be made of non-combustible material;
- ii. have sturdy handrails or walls on both sides;

and

iii. provide a safe route to the ground.

h. Stairs and ramps shall be permanent and have non-slip surfaces.

i. Exit routes higher than 30 inches (such as stairs, ramps, balconies, landings, and porches) shall have full-length side guards.

6. Electrical Systems. All electrical equipment, wiring, switches, sockets and outlets are maintained in good order and safe condition. Any room, corridor, stairway and exit within a facility is sufficiently illuminated.

a. The facility shall have adequate lighting to provide a safe environment and meet user needs.

b. Lighting shall be provided outside the building and in parking lots.

c. Light bulbs shall have shades, wire guards or other shields.

d. Emergency lighting shall illuminate "exit" routes.

#### 7. Ventilation

a. The facility shall not use open flame heating equipment or floor furnaces, unvented space heaters, or portable heating units.

b. Occupied parts of the building, including kitchen and laundry areas, shall be air conditioned and temperature should remain between 65 degrees and 85 degrees Fahrenheit.

c. The entire facility shall be adequately ventilated with fresh air. Windows used for ventilation shall be screened.

d. Provider shall take all reasonable precautions to ensure that heating elements, including exposed hot water pipes, are insulated and installed in a manner that ensures the safety of clients and staff.

#### 8. Plumbing

a. Safe, clean, cold drinking water shall be readily available to all clients.

b. The plumbing systems shall be designed, installed, operated and maintained in a manner that is designed to provide an adequate and safe supply of water for all required facility operations and to facilitate the complete and safe removal of all storm water and waste water.

#### 9. Finishes and Surfaces

a. Lead-based paint or materials containing asbestos shall not be used.

b. Floor coverings must promote cleanliness, must not present unusual problems for the handicapped and have flame-spread and smoke development ratings appropriate to the use area (e.g. client's room versus exit corridor).

c. All variances in floors shall be easily identified by markings, etc. to prevent falls.

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### §7425. Rights, Abuse, Exploitation, and Neglect

A. Client's Rights. Involuntary hospitalization/commitment does not mean loss of your rights to make decisions about one's life. The client shall have the right to expect the following inclusive but not exclusive rights:

1. assistance with healing of family relationships;
2. protection from unsafe and/or unskilled care by any person associated with the facility;
3. protection from unqualified persons providing services under the auspices of treatment;
4. consideration and respect toward the client, family and visitors when those people treat the facility staff with respect and consideration;
5. protection of personal property approved by the facility; and
6. protection from retaliation when client exercises his or her rights.

B. Adult Bill of Rights. Adults have the right to:

1. a humane environment that provides reasonable protection from harm and appropriate privacy for personal needs;
2. be free from abuse, neglect, and exploitation;
3. be treated with dignity and respect;
4. appropriate treatment in the least restrictive setting available that meets individual needs;
5. be told about the program's rules and regulations before admission;
6. be told before admission:
  - a. the condition to be treated;
  - b. the proposed treatment;
  - c. the risks, benefits, and side effects of all proposed treatment and medication;
  - d. the probable health and mental health consequences of refusing treatment; and
  - e. other available treatments which may be appropriate;
7. accept or refuse treatment after receiving the explanation in paragraph 6 above;
8. change of mind at any time (unless specifically restricted by law);
9. a treatment plan designed to meet individual treatment needs, and the right to take part in developing that plan;
10. meet with staff to review and update the treatment plan on a regular basis;
11. refuse to take part in research without affecting regular care;
12. refuse unnecessary and/or excessive medication;
13. not to be restrained or placed in a locked room by self unless a danger to self or others;
14. have personal information kept confidential and to be told about the times when the information can be released without your permission;
15. communicate with people outside the facility. This includes the right to have visitors, to make telephone calls, and to send and receive sealed mail. This right may be

restricted on an individual basis by one doctor or the professional in charge of the program if it is necessary for treatment or for security, but even then the client may contact an attorney or DHH at any reasonable time;

16. be informed in advance of all estimated charges and any limitations on the length of services;

17. receive an explanation of treatment or rights while in treatment;

18. leave the facility within four hours of requesting release (if individual consented to treatment), unless a physician determines that he or she poses a threat of harm to self and others;

19. make a complaint and receive a fair response within a reasonable amount of time;

20. complain directly to DHH at any reasonable time;

21. get a copy of these rights before admission, including the address and phone number of DHH;

22. have rights explained in simple terms, in a way that can be understood, within 24 hours of being admitted.

#### C. Abuse, Neglect, and Exploitation

1. Reporting. All allegations of client abuse, neglect, and exploitation shall be reported verbally/facsimile within 24 hours, and confirmed in writing to HSS within seven days.

2. Abuse. Client abuse includes:

a. any sexual activity between facility personnel and a client;

b. corporal punishment;

c. nutritional or sleep deprivation;

d. efforts to cause fear;

e. the use of any form of communication to threaten, curse, shame, or degrade a client;

f. restraint that does not conform with these rules;

g. coercive or restrictive actions that are illegal or not justified by the client's condition taken in response to the client's request for discharge or refusal of medication or treatment; and

h. any other act or omission classified as abuse by Louisiana law.

3. Neglect. Neglect examples include:

a. failure to provide adequate nutrition, clothing, or health care;

b. failure to provide a safe environment free from abuse or danger;

c. failure to maintain adequate numbers of appropriately trained staff;

d. any other act or omission classified as neglect by Louisiana law.

4. Exploitation. Examples of exploitation include:

a. use of a client's personal resources, such as credit card, medical assistance card, or insurance card, to bill for inappropriate service;

b. use of the client's food stamps or other income to purchase food/services used primarily by others;

c. using the client to solicit money or anything of value from the public, or others.

5. Sexual Exploitation. It may include sexual contact, a request for sexual contact, or a representation that sexual contact or exploitation is consistent with or part of treatment.

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### Subchapter C. Children/Adolescent Programs and Primary Prevention

#### §7427. Children/Adolescent Programs

A. General. Provisions in this section apply to facilities that are inpatient, outpatient, community-based, or primary prevention programs when service recipients are under 18 years of age. The following provisions are in addition to listed requirements for programs, and take precedence over conflicting requirements when services are provided to adolescents or children. Specific programs may have additional requirements in addition to those listed in this section.

1. The program lectures, and written materials shall be age-appropriate and easily understood by clients.

2. The program shall involve the adolescent's family or an alternate support system in the process or document why this is not appropriate.

3. Staff shall not provide, distribute, or facilitate access to tobacco products.

a. Staff shall not use tobacco products in the presence of adolescent clients.

b. The staff shall prohibit adolescent clients from using tobacco products on the program site or during structured program activities.

B. Staffing. The following staffing requirements are minimum standards and do not restrict the facility from utilizing additional employees.

1. Any facility employee who provides direct care to children/adolescents shall meet the requirements of the *Louisiana Children's Code Article 116*. Specifically, the employee may have no documented history indicating the possibility that he/she would endanger the child. Facility shall make every effort to determine criminal history of employees.

2. The facility shall ensure that only qualified professional staff (R.S. 40:1098.2) plan, supervise, or provide education or counseling or training in the emotional, mental health, and substance abuse problems to adolescents.

3. All direct care employees shall have training in human adolescent development, family systems, adolescent psycho-pathology and mental health, substance abuse in adolescents, and adolescent socialization issues.

4. All direct care employees and volunteers shall be trained and competent to use personal and physical restraint.

#### C. Special Considerations

1. Facilities shall address the special needs of adolescents and protect their rights.

2. Adults and adolescents may be mixed for specific groups or activities when no conflict exists.

3. The facility shall obtain consent for admission and authorization to obtain medical treatment from parent or guardian prior to the time of admission for all clients under the age of majority.

4. If functional status of client is not age appropriate, facility shall provide additional supervision to provide for safety of all clients.

D. Minor's Bill of Rights. In accordance with the *Louisiana Children's Code, Article 116*; the minor has the right to:

1. an attorney and the right to communicate with that attorney in a private place at all times;
2. a copy of client rights in a language that can be reasonably understood;
3. receive and send letters, to receive and make telephone calls, to receive visitors (at least weekly);
4. spend a reasonable amount of money on small items, such as snacks, and soft drinks;
5. wear one's own clothes and keep personal things;
6. have a private space for personal belongings;
7. be disciplined in a way that is appropriate. Restraint and seclusion cannot be used to punish or discipline;
8. medicine that makes one feel better. If the medicine makes the minor feel bad, the individual should tell the nurse, doctor or client advocate;
9. treatment in a place that allows the most freedom possible;
10. treatment plan that is set up to meet individual needs;
11. leave the facility when condition improves enough so that treatment can be received in a less restrictive setting;
12. have a private doctor examine client at his or her own expense.

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#### **§7429. Primary Prevention Programs**

A. Purpose. Programs are planned, goal-oriented activities designed for the following purpose:

1. promote personal (emotional, intellectual, physical, spiritual and social) growth of individuals; and/or
2. strengthen those aspects of the community environment which preclude, forestall, or impede the development of alcohol and other drug abuse problems.

B. Types. The following are types of prevention programs:

1. youth-based programs; and
2. community education centers. Educational programs provide educational services through qualified personnel for government agencies, community organizations, school systems (public and private), churches, businesses, medical and health systems, professionals and individuals. These types of programs relate to community and personal health issues concerning the prevention of substance use/abuse.

C. Activities/Strategies/Services

1. Activities

a. Information Dissemination. Primarily one-way communication to reach into a community systematically to identify "at risk" persons and their families, to inform the community of available services, location of needed services, and how to access the system.

b. Education. Primarily two-way communication to improve critical life and social skills, to increase resistance skills, and to improve ability to make judgments regarding the use of alcohol and other drugs.

c. Alternative Activities. Opportunities are provided that exclude the use of alcohol, tobacco, and other drug use.

d. Problem Identification and Referral. Activity provides assessment of community's need for primary prevention and/or identification/referral of "at risk" individuals.

e. Community-Based Process. Activities are designed to enhance the ability of the community to prevent substance abuse.

f. Environmental. Establishes or positively impacts written and unwritten community standards, codes and attitudes toward substance use/abuse.

2. Referral Services. Program staff will be trained to recognize the symptoms of substance abuse/addiction and referrals must be made only to appropriately licensed treatment programs.

D. Staffing. The following staffing requirements are minimum standards and do not restrict the facility from utilizing additional employees.

1. All persons providing services to children/adolescents shall meet the criteria in §7417 of this document and the *Louisiana Children's Code, Article 116*. Facility must employ/assign personnel to provide for the safety of the clients during all activities.

2. A BCPS or QPS or QPC shall provide on-site supervision during all group activities.

3. At least one BCPS shall be available on duty for every 25 clients if program is for youth groups; otherwise for events such as community education, no guidelines.

4. Volunteers who work with children/adolescents shall be screened to prevent potential harm or danger to participants.

5. Prevention professional services differ from those of counselor in that prevention professional duties do not include intervention, therefore QPC or QPS professionals may perform duties of the CPS.

E. Client Functional Status. Clients must be appropriate to program design and presentation.

F. Adherence. Programs will adhere to models currently approved by OAD and DHH/HSS to reduce substance abuse and associated problem behaviors. Providers shall adhere to the following:

1. submit all required documentation for initial licensure as required in §7407 Initial Licensure;

2. maintain rosters of all clients with pre/post test scores;

3. provide services during the hours approved at initial licensing and also provide programs after-school, holidays, summer months, and weekends for youth groups;

4. outcomes shall be measured by reasonable criteria related to program goals.

5. Annual evaluations of program effectiveness to document the effect of the program will provide indicators for continuous quality improvement. Programs are exempt from §7417.D.2.

G. Participant Record Requirements. Each youth based group participant record shall include the following:

1. admission and referral information;

2. client/participant information/ data, name, race, sex, birth date, address, telephone number, Social Security number, school/employer, and next of kin/emergency contact;

3. medical limitations, such as major illnesses and allergies;

4. attendance, participation in services and/or activities; and

5. a release to obtain emergency care in case of illness or injury.

H. Facility Record Requirements. Facility shall maintain additional records as follows:

1. client/participant roster;

2. activity schedule;

3. pre/post test scores;

4. log of clients referred to or received from facilities for treatment or evaluation; and

5. personnel assignments/actual hours of work.

I. Community Education. Information is provided to the public related to abuse/addiction, either as outreach activities or as a resource center. Each facility shall:

1. employ and utilize BCPS or QPS or QPC;

2. submit the following for initial licensure:

a. credentials;

b. scheduled activities and locations;

c. program descriptions;

d. licensure fee with current, complete application;

and

e. description of target population(s).

3. provide all services in accordance with accepted standards of professional conduct.

4. maintain roster of participants/attendees, as well as documentation of all services provided.

5. provide a plan for process and outcome evaluation.

J. Special Considerations. All programs that contract with OAD must meet any additional requirements of OAD, and be approved in writing by OAD prior to licensing by HSS.

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#### **Subchapter D. Core Requirements for Treatment Programs**

##### **§7431. Treatment/Detoxification Programs**

A. General. If treating adolescents and/or children, follow §7427 in addition to other requirements.

B. Professional Staffing Standards. The following are the minimum staffing requirements for all treatment/detoxification programs and do not restrict any facility from utilizing additional staff. Specific programs may have additional staffing requirements.

1. Physician. Every licensed treatment or detoxification program shall have a designated medical director, who provides medical oversight of all care provided, participates in the development of policies and

procedures of the facility, and provides medical care if needed. The following duties may be performed by a qualified advance practice registered nurse when in collaborative practice with the medical director. Additional duties include, non-exclusively:

a. writing the admission/discharge orders, when required;

b. writing/approving all prescription medication orders;

c. writing and providing education regarding the protocols for administering all medications on-site, including non-prescription medications;

d. supervising or providing services and care; and

e. providing consultative and on-call coverage to assure health and safety of clients in the facility.

2. Nursing. Each facility shall have adequate nurses to provide nursing services when indicated by the diagnosis, nursing needs of the clients admitted to the facility, administration of medicines and/or treatments, and general physical health of clients. Adequate shall be defined as having nursing staff available whenever a client has needs requiring professional nursing skills.

3. Pharmacist. Any facility that dispenses/administers prescription medication on-site shall employ adequate staff to assure that any prescription medication administered and/or dispensed on-site shall meet the requirements of R.S. 37:1161 et seq. Facility shall have written agreement with a licensed pharmacist or licensed physician to provide on-site service and consultation and evaluation of medication policy and procedure of facility to dispense prescriptions, reconcile (administration and dispensing ) inventories at least every 30 days, and to maintain medication records for at least three years.

4. Qualified Professional Supervisor (QPS). Every facility shall have QPS on-duty during operational hours at least one hour per week per counselor, two hours per week per counselor-in-training, and additionally as indicated by the needs of the active clients. Primary duties include supervising QPCs and CITs during counseling sessions, treatment planning and counseling for clients who have complex needs/diagnoses. Specific additional requirements for 24-hour facilities are listed in the applicable section.

5. Qualified Professional Counselor (QPC). Each outpatient program shall have full-time QPC on duty during all hours of operation, and as determined by needs of the active clients, on-call after normal business hours. Specific requirements for 24-hour facilities are listed in the applicable section.

C. Treatment/Detoxification Protocols. All services shall be delivered according to a written plan and a posted activity schedule. The treatment program shall:

1. be age and culturally appropriate for the population served;

2. demonstrate effective communication and coordination;

3. provide for appropriate utilization of services;

4. be an environment that enhances the positive self-image of clients and preserves their human dignity;

5. administer/dispense medication safely and legally, only when prescribed or approved by the staff medical doctor or advanced practice registered nurse (APRN);

6. require professional participation in all required components of the treatment program;

7. assure that the hours of scheduled treatment activity meet requirements of the program license; and

8. utilize the 12 core functions of substance abuse counseling and other current standards of practice.

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**§7433. Admission, Discharge, or Transfer**

A. Admission Requirements. Initial Assessment and Diagnosis of specific abuse/addictive disorder/disease by the medical director or other licensed qualified professional (physician, advanced practice registered nurse-certified in mental health, licensed social worker, licensed professional counselor or licensed psychologist) as currently defined in the Diagnostic and Statistical Manual for Mental Disorders (DSM).

1. Initial Admission Diagnosis. Process shall contain:

a. physical examination within 72 hours when one is indicated by the M.D./nursing assessment/screening process.

b. laboratory examinations as required to prevent spread of contagious/communicable disease, as indicated by physical examination or nursing assessment, including drug screening when history is inconclusive or unreliable.

c. medical/nursing assessment/history and screening interview.

d. psycho-social evaluation BQPC/QPS shall document a psycho-social history that provides a thorough understanding of the client's history and present status including:

i. circumstances leading to admission;

ii. alcohol and other drug use, past and present (including amount, frequency, route of administration, and time/date of last use);

iii. past psychiatric and chemical dependency treatment;

iv. significant medical history and current health status;

v. family and social history;

vi. current living situation;

vii. relationships with family of origin, nuclear family, and significant others;

viii. education and vocational training;

ix. employment history (including military) and current status;

x. legal history and current legal status;

xi. emotional state and behavioral functioning, past and present; and

xii. strengths, weaknesses, and needs.

e. intake screening to include: vocational, economic, educational, and criminal/arrest information; and

f. appropriate assignment to treatment modality with referral to other appropriate services as indicated.

i. Clients shall have access to HIV counseling and testing services directly or through referral. Such counseling and testing shall be voluntary, anonymous/confidential, and not limited by ability to pay.

ii. The program shall make testing for tuberculosis and sexually transmitted diseases available to all clients unless the program has access to test results obtained during the past year. The services may be provided directly or through referral as long as appropriate follow-up referral/care is also provided.

2. Additional Requirements. Additional admission requirements are:

a. availability of appropriate physical accommodations;

b. legal authority or voluntary admission;

c. availability of professionals to provide services needed as indicated by the initial assessment and diagnosis; and

d. written documentation that client/family consents to treatment and understands the diagnosis and treatment modality.

3. Client/Family Orientation. Each facility shall provide orientation, confidentially and efficiently primarily by qualified professional, concerning:

a. visitation;

b. family involvement;

c. safety;

d. authorization to provide treatment;

e. potential problems;

f. projected duration of treatment;

g. consequences of non-compliance;

h. treatment methodology; and

i. all pertinent information, including fees and consequences of non-payment of fees.

4. Re-admissions. Each facility shall have written re-admission standards which address criteria, length of stay, authorization to make exceptions, and crisis intervention.

B. Discharge Criteria. Each program shall develop and follow appropriate written criteria to decide when/how clients will be discharged or transferred to another level.

1. Indicators. The criteria shall utilize indicators to determine:

a. satisfactory completion of the level;

b. need for referral or transfer to another level or facility; and

c. when client should be discharged before completing the program.

2. Discharge Plan. A written, client-specific plan to provide reasonable protection of continuity of services, that shall include:

a. client transfer or referral/assignment to outside resources, continuing care appointments, crisis intervention assistance, and discharge summary;

b. documented attempts to involve family or an alternate support system in the discharge planning process;

c. planning before the client's scheduled discharge;

d. individual goals or activities to sustain recovery; and

e. signature of the client and consenting person/guardian.

3. Discharge Summary. When client is being transferred to another level of treatment, two working days

are allowed for completion. In other situations 30 days are allowed. The summary must be written, client specific, and include:

- a. needs and problems identified at the time of admission (may be attached);
- b. services provided;
- c. assessment of the client's progress towards goals;
- d. circumstances of discharge; and
- e. evidence that continuity of care recommended following discharge.

4. Request for Discharge. When such a request is received, the facility shall:

- a. not hold a voluntary client against the consenter/guardian's will;
- b. have written procedures for handling discharges and discharge requests that comply with applicable statutes;
- c. not try to keep a client in treatment by coercion, intimidation, or misrepresentation;
- d. not say or do anything to influence the client's decision that is not justified by the client's condition.

C. Transfer Process. Transfer procedures between two facilities to provide continuum of care which may be based on the compilation of client data rather than completing additional medical history/examination/physician orders, psycho-social assessment, treatment plan, and other pertinent information upon admission to inpatient or outpatient care.

1. Sender requirements:

- a. transfer all client information within two working days of transfer;
- b. notify the receiving facility (in writing) simultaneously with arrival of client any information that will be needed to care for client before transfer information arrives; and
- c. request and receive approval from receiving facility prior to transfer.

2. Receiver requirements:

- a. provide client with orientation to facility; and
- b. update all information received in transfer.

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#### **§7435. Client Records**

A. Client Record Standards. The facility is required to maintain a clinical record according to current professional standards for each client.

1. Safeguards shall be in place to prevent unauthorized access, loss, and destruction.

2. Client record can be copied and/or transferred from one facility to another provided that client signs authorization for transfer of record and provided that confidentiality of information is strictly in adherence with 42 CFR, Part 2.

3. Client records shall be maintained at the facility where the client is currently active and for six months after

discharge. Records may then be transferred to a centralized location for maintenance in accordance with standard practice and state and federal laws.

4. Confidentiality. Records shall be:

- a. accessible only to authorized personnel trained in confidentiality and others granted access by legal authority such as surveyors, investigators, etc.;
- b. not shared with any other entity unless approved in writing by client, except in medical emergencies; and
- c. kept in compliance with 42 CFR, Part 2.

5. Record-keeping Responsibility. A trained medical records person or professional shall be designated as responsible for the client records.

B. Contents. Client record shall accurately document treatment provided and client response in accordance with professional standards of practice at all times. This record shall contain all pertinent past and current medical, psychological, social and other therapeutic information.

1. Minimum client record requirements for Treatment/Detoxification Programs.

- a. Admission diagnosis and referral information;
- b. Client information/ data - name, race, sex, birth date, address, telephone number, social security number, school/employer, and next of kin/emergency contact;

Screening See program specific requirements.

- d. Medical limitations, such as major illnesses, allergies; and
- e. Attendance, participation in services/activities.

2. Additional Minimum Requirements for Client Treatment Records Contents

- a. Initial assessment and diagnosis. See §7431.C.1.
- b. Treatment plan. The plan is a written list of the client's problems and needs based on admission information and updated as indicated by progress or lack of progress. Additionally, the plan shall:

- i. contain input from primary counselor and client within 72 hours after admission, then information from other disciplines added as client is evaluated and treated;

- ii. be reviewed and revised as required, or more frequently as indicated by client needs;

- iii. contain client-specific, measurable goals that are clearly stated in behavioral terms;

- iv. contain realistic and specific expected achievement dates;

- v. contain how facility will provide strategies/activities to help the client achieve the goals;

- vi. be followed consistently by all staff members; and

- vii. contain complete, pertinent information related to the mental, physical, and social needs of the client; and

- c. Diagnostic laboratory and other pertinent information, when indicated.

- d. Progress Notes. In accordance with current professional standards of practice, progress notes shall:

- i. document implementation of the treatment plan and results;

- ii. document services provided to the client. This may be done by filing a copy of the program schedule in the client record and documenting the client's level of participation in the progress notes;

iii. be completed weekly by the QPS/QPC to document progress toward stated treatment plan goals unless client is seen on a less frequent basis in accordance with the treatment plan; and

iv. be verified and co-signed by QPS/QPC when prepared or written by CIT.

e. Client Contact Report. The staff member involved in the incident shall prepare and file a written report.

f. Other pertinent information related to individual client as appropriate.

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### §7437. Core Functions/Services

A. Core Functions. Core functions are: Screening, Intake, Orientation, Assessment, Treatment Planning, Counseling, Case Management, Crisis Intervention, Client Education, Referral, Reports and Record Keeping, and Consultation with Professionals.

1. Assessment~~B~~ore function in which a counselor/program identifies and evaluates an individual's strengths, weaknesses, problems, and needs for the development of the treatment plan. Collection of data from client and/or family/others sufficient to formulate an individualized and client-specific treatment plan or referral to appropriate level of care. If this assessment does not lead to a diagnosis, then it may be performed by QPS/QPC.

2. Case Management~~B~~ore function in which services, agencies, resources, or people are brought together within a planned framework of action toward the achievement of established goals. It may involve liaison activities and collateral contracts with other providers/facilities.

3. Client Education~~B~~ore function in which information is provided to individuals and groups concerning alcoholism and other drug abuse, positive lifestyle changes, and the available services and resources. Educational group size is not restricted and may be offered as outreach program. Program shall:

- a. follow a course outline that identifies lecture topics, activity schedule, and major points to be discussed;
- b. include benefits of participation in appropriate self-help groups; and
- c. not identify the activity as a counseling session.

4. Client Orientation~~B~~ore function in which the client is informed regarding:

- a. general nature and goals of the program;
- b. rules governing client conduct and infractions that can lead to disciplinary action or discharge from the program;
- c. availability of services;
- d. costs; and
- e. client's rights. See §7431.C.3.

5. Consultation with Professionals~~B~~ore function in which functional relationship with counselors and other

credentialed health care professionals is provided as required to assure comprehensive quality care for the client including, but not limited to, treatment of children, adolescents, or clients/family members who have complex problems or who are dually diagnosed with abuse/addiction disorder and mental illness.

6. Counseling (Individual/Group) Services~~B~~ore function in which appropriate support is provided to the client by those professionals qualified to provide therapeutic services.

a. Special skills are used to assist individuals, families, or groups in achieving objectives through:

- i. exploration of a problem and its ramifications;
- ii. examination of attitudes and feelings;
- iii. consideration of alternative solutions; and
- iv. decision making and problem solving.

b. Counseling Session (individual, group, or family) is a documented interaction between qualified professional personnel and client or client and significant others.

c. All counseling groups shall be homogenous and no more than 12 clients.

d. Counseling sessions shall last at least 30 minutes.

7. Crisis Intervention Services~~B~~ore function in which appropriate assistance during emergencies including 24-hour telephone coverage by qualified counselor to provide telephone assistance to prevent relapse, to provide referral to other services, and to provide support during related crises. Facilities may have written contract with another facility to provide coverage only if the caller is automatically transferred or given directions to reach professional assistance, or receive a call from a professional within a 30-minute time frame.

8. Intake~~B~~ore function in which information is gathered about a prospective client. Information is given to a prospective client about the treatment facility and facility's treatment and services. See ' 7431.C.

9. Referral~~B~~ore function in which appropriate services not provided by facility are identified, and client/family is assisted to optimally utilize the available support systems and community resources. Facility shall provide appropriate resource information regarding local agencies to client/family upon need/request and/or procedures to access, including but not limited to, vocational services, community services, and organizations to support recovery such as transitional living services, transportation, and vocational services. Additionally, facility will be expected to:

- a. provide access to appropriate health care and mental health services;
- b. refer pregnant clients who are not receiving prenatal care to an appropriate health care provider and monitor follow-through; and
- c. refer clients to ancillary services necessary to meet treatment goals.

10. Reports and Record Keeping~~B~~ore functions in which results of the assessment and treatment planning are recorded. Written reports, progress notes, client data, and discharge summaries and other client related documentation is recorded in the client record. See ' 7431. F. and G.

11. Screening~~B~~ore function that is the determination of whether a client meets the program's admission criteria. It uses information such as the person's reason for admission,

medical and substance abuse history, and other needed information to determine client's need for treatment, and/or appropriateness of admission. See ' 7431. C.

12. Treatment Planning Core function in which the counselor and the client:

- a. identify and rank problems needing resolution;
- b. establish agreed upon immediate objectives and long-term goals; and
- c. decide on a treatment process, frequency, and the resources to be utilized.

Documentation of treatment planning process shall be in accordance with ' 7431. F and G.

**B. Services**

**1. Toxicology Services**

a. Programs are required to have on-site or written agreement for toxicology services with a laboratory with appropriate Clinical Laboratories Improvement Amendments (CLIA) certification for testing.

b. If collection is performed on-site, facility shall have written protocols for collection of specimens in accordance with current standards of practice and have written approval by the testing laboratory.

c. The minimal set of substances required to be screened for toxicology are subject to annual approval by OAD.

2. Contract Services. Programs may use an outside source to provide any of the services listed above, however, the facility retains responsibility for the service.

3. Formal written agreements with professionals or other entities to provide services which may or may not be directly offered by facility staff:

- a. are required for contract services;

both parties shall review and document review of each agreement annually;

c. the facility retains full responsibility for all services provided by contract, unless client is discharged from original facility and admitted to contract facility;

d. all services provided by contract shall meet the requirements of these standards and be provided only by qualified providers (licensed if required).

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**Subchapter E. Outpatient Programs**

**§7439. Outpatient Counseling Programs**

A. Purpose. Programs provide non-residential treatment services for clients who require on-going support on a regular or irregular basis, such as:

1. continuing Care for those who have completed primary treatment and require minimal support to avoid relapse;

2. early Intervention for those who have been identified as substance abusers and referred for education, activities, or support services designed to prevent progression of disease;

3. initial point of entry/reentry. Activities related to assessment, evaluation, diagnosis and assignment of level of care are provided, including transfer between facilities and/or treatment modalities, relapse assessment, and assignment to level of care;

4. combination of the above

Note: Facility license is not required for individual or group practice of licensed counselors/therapists providing the above services under the auspices of their individual license(s).

B. Staffing. All requirements are in addition to §7431.

1. QPS On-call as needed for crisis intervention.

2. QPC hours of operation, and on-call as needed for crisis intervention.

3. Nursing and Pharmacy B not required, unless designated on license.

4. Caseload size is based on needs of the active clients to ensure effective, individualized treatment and rehabilitation. Approval by OAD or HSS is required in writing when caseload exceeds 50 active clients. For this standard, *active* is defined as being treated at least every 90 days.

C. Client Functional Status. Clients must be able to function independently in outpatient setting with appropriate support.

D. Special Considerations. When these services are court ordered, facility will provide all services in accordance with these licensing standards, maintain court related information, and initiate necessary communications to facilitate the court referral process.

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**§7441. Intensive Outpatient Treatment Programs**

A. General

1. All requirements are in addition to core requirements.

2. Outpatient treatment facilities offer increased levels of responsibility for clients to apply knowledge and to practice skills in structured and non-structured settings.

3. Organized and structured day/evening treatment sessions are offered for at least nine hours per week on three or more days per week.

B. Staffing. All requirements are in addition to §7431 unless otherwise noted .

1. Supervisor (QPS). Ten hours weekly during hours of operation.

2. Counselor (QPC). Counselor shall be on site during all hours of operation and available for crisis intervention as needed.

3. Caseload. Counselor shall have no more than 25 active clients unless written approval is granted by OAD or HSS. For this standard, *active* is defined as being treated at least every 30 days.

4. Groups (counseling) shall not exceed 12 clients, but may be smaller in keeping with the needs of the clients.

5. Facility may use outpatient counseling standards for those clients who do not receive intensive outpatient treatment, however, the client must meet criteria for functional status for outpatient counseling and be designated as counseling client.

C. Client Functional Status. Clients shall be able to function with limited supervision within their existing environment or in environments designed to provide support, but cannot independently maintain stability for at least 72 hours.

D. Special Considerations. Treatment plan review/adjustments shall be documented in progress notes weekly by counselor, and by other disciplines as needed to assure continuity of care.

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#### **§7443. Opiate Addiction Treatment Programs**

A. General. All requirements are in addition to core requirements.

1. Opiate addiction treatment programs detoxify chronic opiate addicts from opiates and opiate derivatives and maintain the chronic opiate addict utilizing a synthetic narcotic until the client can achieve recovery through a spectrum of counseling and other supportive/rehabilitative services.

2. Programs shall document justification, annually, for any client who continues to require opiate addiction treatment after five years.

3. The primary mission of all opiate addiction treatment is complete withdrawal of client from all addictive substances.

4. Treatment protocols require that facility provide medically-approved and medically-supervised assistance to withdraw from the synthetic narcotic when:

- a. the client requests withdrawal;
- b. quality indicators predict successful withdrawal;
- c. client or payor source suspends payment of fees, and
- d. other events occur as defined in the 21CFR 291.505.

5. Each facility is required to independently meet the requirements of the protocols established by OAD/State Methadone Authority.

6. Any program that fails to maintain any required licensure shall be also terminated immediately.

7. Facility shall get approval from State Methadone Authority prior to submitting application to HSS for initial licensure.

8. Each program shall also comply with requirements of 21 CFR 291.505 unless the comparable state requirement is more stringent.

9. Each client shall have documented evaluation by a physician or advanced practice registered nurse as follows:

- a. at least weekly until the client becomes physically stable and has completed at least four weeks of attendance at clinic (at least six days per week); then
- b. at least quarterly until the client completes one year in the program.
- c. annually thereafter; and
- d. any time that client is unstable.

#### **B. Treatment Phases/Specific Requirements**

1. Initial Treatment. Intensive assessment and intervention phase lasting from three to seven days in duration. Services to be provided are:

- a. admission verification by physician that treatment is medically necessary as determined by physical examination and medical diagnosis ( prior to administering of any medication).
- b. individual counseling as indicated by daily nursing assessment;
- c. initial treatment plan includes initial dose of medication and plan for treatment of critical health or social issues; and
- d. client may not be issued any unsupervised take home dose (until written determination is available); and
- e. client orientation.

2. Early Stabilization. Beginning on the third to seventh day of treatment (following initial treatment) through 8 weeks duration, the following shall be provided:

- a. frequent monitoring by nurse of the clients' reaction to medication;
- b. individual counseling comprised of at least four individual counseling sessions during this phase;
- c. development of treatment plan within thirty days with input by all disciplines, client and significant others; and
- d. random monthly drugs of abuse/alcohol screens.

3. Long-term Treatment. This stage follows the end of early stabilization and lasts for an indefinite period of time. Services to be provided are:

- a. random monthly drug/alcohol screens until the client has negative drugs of abuse/alcohol screens for one year, then approximately every 90 days. Clients who are allowed six days of take-home medication shall be tested every month;
- b. continuous evaluation by the nurse of the clients' use of medication/treatment from other sources;
- c. documented reviews of the treatment plan every ninety days by treatment team; and
- d. progress notes addressing response to treatment at least every 30 days.

4. Withdrawal. Medically supervised withdrawal from synthetic narcotic with continuing care. This service is provided if and when appropriate. Services to be provided are:

- a. decreasing the dose of the synthetic narcotic to accomplish gradual, but complete withdrawal, within the tolerance level of the client;
- b. counseling of the type and quantity determined by the indicators and the reason for the medically supervised withdrawal from the synthetic narcotic; and

c. discharge planning with continuity of care to assist client to function without support of the medication and treatment activities.

A. Counseling. Type and quantity shall be based on the assessment and recommendations of the treatment team and shall meet the following requirements:

1. Written documentation shall support decisions of the treatment team including indicators such as positive drug screens, maladjustment to new situations, inappropriate behavior, criminal activity, and detoxification procedure.

2. All counseling shall be provided individually or in small (not to exceed 12 clients) homogenous groups provided that group counselor is familiar with all clients and documents all contacts in the client record.

3. Written criteria are used to determine when a client will receive additional counseling and/or when individual take home medication privileges are more stringent than state guidelines.

4. Counseling shall be provided when requested by client/family.

D. Staffing. All requirements are in addition to §7431.

1. Pharmacist. Licensed pharmacist or licensed dispensing physician, in accordance with R.S. 38:1161 et seq., shall:

- a. dispense all medications;
- b. reconcile administration and dispensing inventory records at least every 30 days; and
- c. maintain medication records for at least three years;
- d. approve all transport devices for take home medications.

2. Nursing. All medications shall be administered under the supervision of a registered nurse or physician. A licensed practical nurse cannot administer medication unless registered nurse or physician is on duty or on call as defined in §7401.

3. QPS. On-site five hours per week per 100 clients.

4. QPC. One full time for each 50 clients and prorated if more or less active clients. The counselor's caseload is determined by the needs of the clients in the counselor's caseload and the counselor's available time to provide individual and group counseling. Any caseload greater than 50 clients per counselor must have written approval of State Methadone Authority and HSS.

5. Physician. Sufficient hours on-duty and on-call as needed during hours of operation.

E. Client Admission Criteria

1. Facility shall verify that the client:

- a. is at least 18 years old, unless the client has parental consent, and
- b. meets the federal requirements regarding determination that client is currently addicted to opiates and has been addicted to opiates for at least one year prior to admission.

2. Physician Verification. The physician shall diagnose the client based upon:

- a. referring medical history and diagnosis of chronic opiate addiction, as currently defined in the Diagnostic and Statistical Manual for Mental Disorders (DSM);
- b. physical examination;

c. confirmed documented history of opiate addiction;

d. needle marks(if indicated);

e. opiate positive drug screens; and

early signs of withdrawal.

F. Take-Home Medication Privilege. Determinations shall be made by the treatment team and documented in the client record.

1. Client responsibilities/considerations:

a. negative drug/alcohol screens for at least 90 days;

b. regularity of clinic attendance;

c. absence of serious behavioral problems;

d. absence of known criminal activity;

e. stability of home environment and social relationships;

f. assurance that take home medication can be safely stored;

g. whether the benefit to the patient outweighs the risk of diversion.

2. Exceptions. Each exception must be documented and justified by the physician, approved by the State Methadone Authority and federal agencies as required, then an exception can only be granted by those agencies for emergencies and severe travel hardships.

3. Standard Schedule (if indicated)

a. After 90 days in treatment with clinic attendance at least three times per week, no more than a two-day supply of take-home medication.

b. After two years in treatment with clinic attendance at least two times per week, no more than a three-day supply of take-home medication.

c. After three years in treatment with clinic attendance at least weekly, no more than a six-day supply of take-home medication.

4. Revocation of Privilege. Positive drug screens at any time, revoke the take home privilege and require a new determination to be made by the treatment team.

5. When the clinic is closed for a legal holiday or Sunday, a take home dose may be dispensed to clients who have attended the clinic at least twice and who have been determined by the nurse to be physically stable and by the counselor to create a minimal risk for diversion.

H. Client Record. Specific additional requirements for documentation include:

1. standards of clinical practice regarding medication administration/dispensing;

2. results of five most recent drug urine screens with action taken for positive results;

3. physical status and use of additional prescription medication;

4. monthly or more frequently, as indicated by needs of client, contact notes/progress notes which include employment/vocational needs, legal and social status, overall client stability; and

5. any other pertinent information.

I. Training. In addition to Orientation as described in §7419. Staffing Qualifications/Requirements, all direct care employees shall receive training and demonstrate knowledge that includes:

1. symptoms of opiate withdrawal;

2. drug urine screens and collections, policies and procedures;
3. current standards of practice regarding opiate addiction treatment;
4. poly-drug addiction; and
5. information necessary to assure care is provided within accepted standards of practice.

J. Temporary Transfers or Guest Dosing. The facilities involved shall do the following:

1. Receiving facility shall verify dosage prior to administering medication.
2. Sending facility shall verify dosage and obtain approval/acceptance from receiving facility prior to clients transfer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1057.1 - 9, redesignated R.S. 40:1058.1 - 9.

HISTORICAL NOTE: Promulgated by Health and Human Resources Administration, LR 2:154 (May 1976), amended by the Department of Health and Human Resources, Office of Hospitals, Bureau of Substance Abuse, LR 3:16 (January 1977), amended by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 12:26 (January 1986), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 26:

## **Subchapter F. Twenty-four Hour Facilities**

### **§7445. Additional Core Requirements for twenty-four hour facilities**

#### **A. Physical Plant Requirements**

1. Kitchens. Kitchens used for meal preparations by either staff or clients shall be appropriately sized and provided with the necessary equipment for the preparation, storage, serving and clean-up of all meals provided to the clients/staff. In addition, if clients prepare meals, additional equipment and space will be required. All equipment shall be maintained in working order.

a. Trash containers shall be made of metal or United Laboratories-approved plastic.

b. Trash containers in kitchens and dining area shall be covered.

2. Staff Quarters. Live-in staff shall have adequate, separate living space with a private bathroom (toilet, wash basin, and tub/shower).

3. Leisure. Allotted leisure space shall be adequate for the capacity designated on the license and approved by DHH-Engineering and Planning. Each living unit of any residential facility shall contain a space for the free and informal use of clients. This space shall be constructed and equipped to meet programmatic goals.

4. Dining Area. Space shall be provided that permits clients, staff and guests to eat together in small groups and is clean, well-lighted, ventilated and attractively furnished.

5. Bedrooms. Mobile homes shall not be used for client sleeping areas. No more than four clients may occupy a designated bedroom space unless the floor plan is approved by DHH sections of Engineering and Professional Review, Fire Marshal, OAD and HSS. Sleeping areas shall have at least:

a. 80 usable square feet per person in single-occupancy rooms;

b. 60 usable square feet per person in multiple-occupancy rooms (or 50 square feet per person if bunk beds

are used). Bunk beds shall not be used for Inpatient Primary Treatment programs;

c. doors for privacy and a functional window;

d. adequate personal storage space for each client, including space for hanging clothes and adequate drawer space;

e. a ceiling height of at least seven feet six inches in a bedroom space of a size consistent with square footage requirements above, even if part of the room has a ceiling less than 7 feet six inches tall.

f. bed of solid construction, appropriate to size and age of client, that has a clean, comfortable, non-toxic fire-retardant mattress that fits bed. Cots or other portable beds are to be used in emergencies only.

g. clean sheets, pillow, bedspread and blanket provided by the facility as needed or requested by the client unless the request is unreasonable. All linens must be in good repair and systematically removed from use when no longer usable;

h. enough room above the uppermost mattress of any bed to allow the occupant to sit up;

i. a door/escape window leading directly to the outside of the building.

6. Bathrooms. There shall be at least one sink, one tub or shower, and one toilet for every eight residents.

a. Showers and tubs shall have no-slip surfaces and curtains or other safe enclosures.

b. Items required for personal hygiene shall be provided in residential facilities unless clients are already in possession of such items.

#### **7. Miscellaneous**

a. Personal appliances shall be in good working order and inspected for safety hazards.

b. All clients shall have access to laundry services at reasonable cost or properly maintained laundry facilities.

8. Recreational Equipment. All 24-hour treatment facilities shall have access to reasonable outdoor recreational space and suitable recreational equipment.

9. Vehicles. Transportation shall be provided in a safe and reliable vehicle that is properly licensed, insured, and inspected, and driven by an appropriately licensed person. Vehicles must be adequately insured and operated in accordance with all applicable laws and regulations.

B. Dietary Services. Services are provided on-site under the direction of a qualified dietitian, who is available for telephone consultation whenever client is admitted and has physician orders for dietary restrictions/supplements.

#### **1. General Requirements. The facility shall provide:**

a. meal break after five consecutive hours of scheduled activities;

b. an OPH approved kitchen with continuous conditions/procedures to maintain all foods at temperatures and under conditions to assure safe, sanitary handling;

c. nutritious meals of adequate quality and quantity to meet the needs of each client, including religious and dietary restrictions;

d. at least three meals daily, with no more than 14 hours between any two meals;

e. at least an evening snack;

#### **2. Dietitian. The dietitian shall:**

a. approve menus and provide written guidelines for substitutions in advance;

b. provide staff in-service training as needed to assure quality meal service;

c. provide information to professional staff regarding dietary needs of specific clients and be available for consultation when necessary.

3. Facility. The facility shall:

a. serve meals in a relaxed atmosphere that promotes utilization of newly learned skills in socialization and communication;

b. maintain sanitation of dishes;

c. ensure that all dishes, cups and glasses used by clients are free from chips, cracks or other defects; and

d. ensure that animals are not permitted in food storage, preparation, and dining areas.

4. Responsibility. Facility retains responsibility to assure that meal preparation/service with client participation meets all requirements listed above and to supervise adequately to ensure compliance.

a. The program shall define duties in writing and have written instructions posted or easily accessible to clients.

b. If menu planning and independent meal preparation are part of the client's treatment program, a licensed dietitian shall:

i. approve the client training curriculum; and

ii. provide training or approve a training program for staff who instruct and supervise clients in meal preparation.

5. Contract Services. Meal preparation/service may be provided by contract service. However, facility is responsible for ensuring that all standards above are met.

C. Adolescent/Children Requirement.

1. Staffing. All requirements are in addition to §7431.

a. Twenty-four-hour facilities require that the qualified professional counselor ratio to clients shall be no higher than 1:8 during waking hours. A minimum of two staff persons shall be present at all times. A qualified professional counselor shall be on call at all times. Program sponsored activities away from the facility require staff to client ratio no higher than 1:5 with a minimum of two adults at all times.

b. Clients shall be under direct supervision at all times.

i. Onsite, staff shall be readily available at all times, preferably within eyesight or hearing distance. If clients are not within eyesight, staff shall conduct visual checks at least once every hour, including bed checks.

ii. Offsite, clients shall be within eyesight at all times.

2. Educational Resources. Programs for school age children shall provide Department of Education-approved opportunity for clients to maintain grade level and continuity of education during any treatment lasting longer than 14 days unless treatment occurs during school vacation.

3. Physical Plant

a. Residential facilities shall have separate bedrooms and bathrooms for adults and adolescents and for males and females.

b. Adults and adolescents shall not be housed in the same area.

4. Family Communications. The facility shall allow regular communication between an adolescent client and the

client's family and shall not arbitrarily restrict any communications without clear, written, individualized clinical justification documented in the client record.

D. Dependent Care. A program that designed to provide substance abuse treatment to mothers with dependant children who remain with parent while the parent is in treatment.

1. Treatment Services

a. Weekly individual and group counseling or family therapy shall be conducted by qualified professional with appropriate experience.

b. Parenting classes shall be provided weekly. Attendance is required.

c. The program shall address the specialized needs of the parent and include services for children.

d. Education, counseling, and rehabilitation services shall address:

i. the effects of chemical dependency on a woman's health and pregnancy;

ii. parenting skills; and

iii. health and nutrition.

e. The program shall have a procedure to regularly assess parent-child interactions. Any identified needs shall be addressed in treatment.

f. Program staff shall provide access to family planning services.

2. Staffing. All requirements are in addition to §7431.

a. Qualified trained professionals shall provide constant supervision appropriate to age of each child.

b. The program shall provide or arrange for child care with a qualified provider while the parent participates in treatment activities. Before supervising children independently, the provider shall have infant CPR certification and at least eight hours training in the following areas:

i. chemical dependency and its impact on the family;

ii. child development and age-appropriate activities;

iii. child health and safety;

iv. universal precautions;

v. appropriate child supervision techniques; and

vi. signs of child abuse.

c. Every children's program shall have an employee or consultant who is available to provide staff training, evaluation of effectiveness of direct care staff, and to plan activities, etc. for at least one hour per week per child. This employee shall meet the following educational requirements:

i. 90 clock hours of education and training in child development and/or early childhood education; and

ii. one year of documented experience providing services to children.

d. When staff are responsible for children, the staff-to-child ratio shall not exceed 1:3 for infants (18 months and younger) and 1:6 for toddlers and children. Clients shall not supervise another parent's children without written consent from the legal guardian and staff approval.

3. Special Considerations

a. Staff shall not allow anyone except the legal guardian or a person authorized by the legal guardian to take a child away from the facility. If an individual shows

documentation of legal custody, staff shall record the person's identification before releasing the child.

b. Facility shall have written policy/procedure regarding parent abuse and/or neglect of a child.

c. Residential programs shall not accept dependents over the age of 12 without specific variance approval of OAD and HSS.

d. Children over the age of six shall not share a bedroom with a member of the opposite sex who is not in the child's immediate family.

e. The program shall ensure that children are directly supervised by parents or qualified providers at all times.

f. The program shall have a written policy and a current schedule showing who is responsible for the children at all times.

g. The daily activity schedule shall include a variety of structured and unstructured age-appropriate activities.

h. The program shall provide a variety of age-appropriate equipment, toys, and learning materials.

i. School age children shall have access to school.

j. Standards protecting the health, safety, and welfare of clients also apply to their children.

k. Behavior management shall be fair, reasonable, consistent, and related to the child's behavior. Physical discipline is prohibited.

#### 4. Safety Practices

a. The evacuation procedures shall include provisions for children approved by the fire marshal.

b. The program shall not allow children to use:

i. climbing equipment or swings on or near concrete or asphalt;

ii. toys that explode or shoot things;

iii. other sharp or dangerous items; or

iv. toys and equipment in disrepair.

c. The program shall have safeguards to prevent children from using toys that are dangerous because they are not age-appropriate.

d. The program site shall meet the additional physical plant requirements as required for children.

#### 5. Health Practices

a. The program shall have procedures for isolating parents and children who have communicable diseases and providing them with appropriate care and supervision.

b. The program shall keep current immunization records for each child at the program site.

c. The program shall obtain a consent to obtain emergency medical care for each child at admission.

d. Each child shall have an assessment by a medical doctor and/or advanced practice registered nurse within 96 hours of admission. Copies of an assessment performed up to seven days before admission are deemed to meet this requirement.

e. The program shall provide potty chairs for small children and sanitize them after each use.

f. The program shall provide age-appropriate bathing facilities. Infants shall not be bathed in sinks.

g. Staff, volunteers, and parents shall use universal precautions when caring for children other than their own.

h. The program shall ensure that children are clean and appropriately dressed.

i. Staff shall check all diapers frequently, change without delay, and dispose of the diapers in a sealed container and sanitize the changing area.

j. The program shall provide an adequate diet for childhood growth and development, including two snacks per day.

k. Children's medication shall be given according to the label by the parent or a licensed health professional. The facility shall obtain written consent from the parent to administer the medication, as required. The facility shall assume full responsibility for the proper administration and documentation of medication.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1057.1 - 9, redesignated R.S. 40:1058.1 - 9.

HISTORICAL NOTE: Promulgated by Health and Human Resources Administration, LR 2:154 (May 1976), amended by the Department of Health and Human Resources, Office of Hospitals, Bureau of Substance Abuse, LR 3:16 (January 1977), amended by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 12:26 (January 1986), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 26:

### §7447. In-patient Detoxification Programs

A. Types. All requirements are in addition to core requirements.

1. Medically Supported. Professional medical and nursing coverage available as determined by the needs of clients admitted for detoxification in a non-hospital residential setting.

2. Non-medical. Semi-skilled observation, monitoring and treatment by trained para-professionals, for those clients who have been medically approved, and whose detoxification process can be predicted.

NOTE: Medical detoxification is not covered under this licensure as it involves professional level continuous observation, monitoring and treatment for those clients whose detoxification process cannot be predicted due to unstable physical condition or other relevant conditions. Louisiana has only hospital-affiliated medical detoxification programs.

B. Staffing. All requirements are in addition to §7431 unless otherwise noted.

1. Medically Supported Detoxification. Facility shall have qualified professional medical, nursing, and other support staff necessary to provide services appropriate to the needs of clients being admitted to the program.

a. QPSB10 hours per week per 10 clients.

b. QPCB40 hours per week per 10 clientsB may be combination of two or more professional disciplines.

2. Non-medical DetoxificationB personnel shall consist of professional and other support staff who are adequate to meet the needs of the clients admitted to the facility.

a. QPSB five hours per week per 10 clients.

b. QPCB40 hours per week per 15 clientsB may be combination of two or more professional disciplines.

3. Designated medical director may be consultative only.

C. Emergency Admissions. The admission assessment process may be delayed only until the client can be interviewed, but no longer than 24 hours unless seen by a physician. Facilities are required to orient direct care employees to monitor, observe and recognize early symptoms of serious illness and to access emergency services promptly.

1. History. The program shall obtain enough medical and psycho-social information about the client to provide a clear understanding of the client's present status. Exceptions shall be documented in client record.

2. Medical Clearance/Screening

a. Medically Supported. Medical history and physical examination completed during the 24 hours preceding admission is acceptable, if it is approved by the program's physician or advanced practice nurse. A medical history shall be completed within 24 hours and a physician's examination within 72 hours, unless emergency occurs.

b. Non-medical. Medical screening upon arrival, by First Responder, or equal as reflected in §7423. Health and Safety, with telephone access to RN or MD for instructions for the care of the client.

3. Toxicology/Drug Screening

a. Medically Supported. Physician may waive drug screening if and when client signs list of drugs being abused and understands that his/her dishonesty could result in severe medical reactions during detoxification process.

b. Non-medical. Clients who require drug screening shall be transferred to Medically Supported or Medical Detoxification Program until stabilized.

4. Stabilization Plan. Qualified professional shall identify the client's short term needs based on the detoxification history, the medical history, and the physical examination, if available and prepare a plan of action until client becomes physically stable.

5. Detoxification Plan

a. Medically Supported. The detoxification plan shall be reviewed and signed by the physician and the client, and shall be filed in the client's record within 24 hours of admission with updates as needed.

b. Non-medical. The detoxification plan shall be reviewed and signed by the counselor and the client, and shall be filed in the client's record within 24 hours of admission with updates as needed.

6. Detoxification Notes. The program shall implement the detoxification plan and document the client's response to and/or participation in scheduled activities. Notes shall include:

- a. the client's physical condition, including vital signs;
- b. the client's mood and behavior;
- c. client statements about the client's condition and needs; and
- d. information about the client's progress or lack of progress in relation to detoxification goals; and
- e. additional notes shall be documented as needed.

7. Physicians' Orders.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1057.1 - 9, redesignated R.S. 40:1058.1 - 9.

HISTORICAL NOTE: Promulgated by Health and Human Resources Administration, LR 2:154 (May 1976), amended by the Department of Health and Human Resources, Office of Hospitals, Bureau of Substance Abuse, LR 3:16 (January 1977), amended by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 12:26 (January 1986), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 26:

## § 7449. Primary Residential Treatment Programs

A. General. All requirements are in addition to core requirements. Programs shall include:

1. continuous monitoring, observation, and treatment modalities using the 12-step program design;

2. at least 25 hours of structured treatment activities per week including counseling and educational activities. At least three additional hours must be organized social and/or recreational activities.

B. Staffing. All requirements are in addition to §7431, with the exception of a pharmacist.

1. QPSB shall be on duty as needed, but at least 10 hours per week to assure close supervision and individualized treatment.

2. QPCB counselor shall be on-duty whenever counseling is being provided. If counseling is needed after customary hours, counselor shall be available to be on-duty.

3. Caseload shall not exceed 1:15. Size of counseling groups shall be determined by the needs of clients, but shall not exceed 12 clients.

C. Client Functional Status. Client shall be medically/mentally stable and/or without conditions other than AA/DD that require daily or more frequent monitoring, medications or treatments.

D. Special Requirements. Weekly treatment plan review with documentation by all appropriate disciplines at least once during the first two weeks of treatment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1057.1 - 9, redesignated R.S. 40:1058.1 - 9.

HISTORICAL NOTE: Promulgated by Health and Human Resources Administration, LR 2:154 (May 1976), amended by the Department of Health and Human Resources, Office of Hospitals, Bureau of Substance Abuse, LR 3:16 (January 1977), amended by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 12:26 (January 1986), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 26:

## §7451. Inpatient Primary Treatment

A. General. All requirements are in addition to core requirements. Programs shall include:

1. Continuous monitoring, observation, and treatment modalities using the twelve-step program design or other models by appropriate medical and psychiatric support personnel.

2. At least 25 hours of structured treatment activities per week including counseling and educational activities. At least three additional hours must be organized social and/or recreational activities, and

3. Non-acute therapeutic regime including medical and psychiatric care, as needed.

B. Staffing. All requirements are in addition to §7431.

1. QPSB 5 hours per week per 25 clients to also provide therapy.

2. QPCB 40 hours per week per 15 clients.

3. Caseload shall not exceed 1:12 unless prior approved by OAD and HSS.

4. Nursing. Registered nurse is required at least 40 hours per week per 50 clients. Additionally, nursing functions may be supplemented by licensed practical nurses, if a registered nurse or physician is on-duty/on-call in accordance with §7401.

C. Client Functional Status. Clients may require psychiatric and/or medical /nursing care in addition to substance abuse services. Facility may utilize tiered system with client progression to Residential Treatment level of care, however, client must meet the functional status requirements and the facility must designate.

D. Special Requirements

1. Weekly treatment plan review shall be documented by all disciplines involved in care of client to assure continuity of care.

2. Emergency Power. Facilities with capacity greater than 50 clients shall have a reliable, adequately sized emergency power system. The emergency power system is powered by a generator set or battery system, where permitted, to provide power during an interruption of normal electrical service.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1057.1 - 9, redesignated R.S. 40:1058.1 - 9.

HISTORICAL NOTE: Promulgated by Health and Human Resources Administration, LR 2:154 (May 1976), amended by the Department of Health and Human Resources, Office of Hospitals, Bureau of Substance Abuse, LR 3:16 (January 1977), amended by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 12:26 (January 1986), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 26:

**§7453. Community-Based Programs**

A. General. All requirements are in addition to core requirements. Programs shall include:

1. transitional living, support and counseling, room and board, social and recreational activities and vocational opportunities;

2. structured, drug-free environment to allow client to maintain or to improve upon the gains made during prior treatment or currently being made in treatment.

3. opportunities for the client to focus on re-socialization and to gradually resume responsibilities associated with independent living.

4. provision of services in Halfway and Three Quarter Houses.

B. Staffing. All requirements are in addition to §7431.

1. QPSB available by telephone for consultation.

2. QPCB counselor must be on-duty when majority of clients are awake and on-site.

Caseload shall not exceed 1: 25 unless prior approved by OAD and HSS.

3. House ManagerBontreatment, direct care person who supervises activities of the facility when the professional staff is on call, but not on duty. This person is required to have adequate orientation and skills to assess situations related to relapse and to provide access to appropriate medical care when needed.

C. Client Functional Status. Clients shall be capable of increasing life responsibilities or be additionally enrolled in primary treatment. If clients are admitted who are also receiving primary treatment, then facility shall meet requirements of Residential Treatment and facility is expected to employ additional professional staff as needed.

D. Special Considerations. Treatment plan review shall be documented in progress notes monthly by all disciplines involved in care of client to assure continuity of care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1057.1 - 9, redesignated R.S. 40:1058.1 - 9.

HISTORICAL NOTE: Promulgated by Health and Human Resources Administration, LR 2:154 (May 1976), amended by the Department of Health and Human Resources, Office of Hospitals, Bureau of Substance Abuse, LR 3:16 (January 1977), amended by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 12:26 (January 1986), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 26:

**§7455. Therapeutic Community (Long Term Residential)**

A. General. All requirements are in addition to core requirements. Facilities shall provide:

1. highly structured environments designed to treat those clients who have demonstrated a pattern of recidivism or a need for long term residential treatment;

2. graduated levels of increasing responsibility, functional capacity, autonomy, privilege, and authority to promote emotional and interpersonal growth through experience or expectation, accountability, support, evaluation, and both favorable and unfavorable consequences for behavior.

B. Staffing. All requirements are in addition to §7431.

1. QPSB additionally, five hours per week to provide supervision and individual treatment as indicated.

2. QPCB 40 hours per week per 20 clients.

3. CaseloadBnot to exceed 1: 20 unless prior approval granted by OAD and HSS.

4. Senior ClientsBmay be utilized as volunteers to assist in the recovery process, provided that facility staff is on-site and immediately available if needed.

C. Client Functional Status. Upon admission, client must require constant supervision and monitoring to maintain stability.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1057.1 - 9, redesignated R.S. 40:1058.1 - 9.

HISTORICAL NOTE: Promulgated by Health and Human Resources Administration, LR 2:154 (May 1976), amended by the Department of Health and Human Resources, Office of Hospitals, Bureau of Substance Abuse, LR 3:16 (January 1977), amended by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 12:26 (January 1986), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 26:

Interested persons may submit written comments to Ben A. Bearden, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, Louisiana 70821-9030. He is responsible for responding to inquiries regarding this proposed rule. A public hearing on this proposed rule is scheduled for Friday, May 26, 2000 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, Louisiana. At that time all interested persons will be afforded an opportunity to submit data, views or arguments 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.

David W. Hood  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Minimum Standards/Requirements for  
Substance Abuse/Addiction Treatment  
Facilities/Programs**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
Implementation of this proposed rule will not result in an increase or decrease in state programmatic costs. However, \$4,320 (\$2,160 SGF and \$2,160 FED) will be incurred in SFY 2000-2001 for the state's administrative cost of promulgating 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 increase state revenue collections by approximately \$2,160 in SFY 2000-2001 for the federal share of the cost of promulgating this proposed rule, the final rule, and for printing the new substance abuse licensing standards.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
This rule establishes the minimum licensing standards required for all substance abuse/addiction treatment facilities/programs. Any existing substance abuse/addiction treatment facilities/programs that cannot meet these standards will have its license revoked. Adoption of these standards will assure the quality of care provided by substance abuse/addiction treatment facilities/programs thus clients will benefit from this effort. There is insufficient data available on substance abuse facilities/programs operating in Louisiana to project a fiscal impact.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There are currently 193 providers in the classes of providers toward which these proposed standards will apply. The proposed minimum licensure standards may cause some of these providers to choose to discontinue, resulting in a reduction in the number of current operating providers. However, it is anticipated that new substance abuse/addiction treatment facilities may be licensed, thereby increasing employment opportunities for Louisiana residents as the facilities hire qualified staff. There is insufficient data available on substance abuse facilities/programs operating in Louisiana to project a fiscal impact.

Ben A. Bearden  
Acting Director  
0004#090

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Laboratory and Portable X-Ray  
Services' Reimbursement Reduction

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt the following rule under the Medical Assistance Program as authorized by R.S. 46:153 and 36:254 and pursuant to Title XIX of the Social Security Act and as directed by the 1999-2000 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 proposed rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing provides coverage for laboratory and portable x-ray services under the Medicaid Program. Reimbursement for laboratory services is made on the basis of either the lower of billed charges, the state maximum amount, or the Medicare fee schedule amount. Reimbursement for portable x-ray services is on a flat fee basis. As a result of a budgetary shortfall, the Bureau determined it was necessary to reduce the reimbursement rates for laboratory and portable x-ray services by 7 percent (*Louisiana Register*, Volume 26, Number 2). The Bureau now proposes to adopt a rule to continue the provisions contained in the February 1, 2000 emergency rule.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed rule on the family has been considered. This proposed rule has no known impact on family formation, 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 reduces the reimbursement rates for laboratory and portable x-ray services by 7 percent. This action is necessary to avoid a budget deficit in the Medical Assistance Program.

Interested persons may submit written comments to the following address: Ben A. Bearden, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is the person responsible for responding to all inquiries regarding this proposed rule. A public hearing on this proposed rule is scheduled for Friday, May 26, 2000 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, orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Laboratory and Portable X-Ray  
Services' Reimbursement Reduction**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
It is anticipated that the implementation of this proposed rule will reduce state program costs by approximately (\$146,994) for SFY 1999-00, (\$904,199) for SFY 2000-01, and (\$931,325) for SFY 2001-02. It is anticipated that \$120 (\$60 SGF and \$60 FED) will be expended in SFY 1999-00 for the state's administrative expense for promulgation of this proposed rule and the final rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will reduce federal revenue collections by approximately (\$348,518) for SFY 1999-00, (\$2,158,807) for SFY 2000-01, and (\$2,223,571) for SFY 2001-02.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Implementation of this proposed rule will reduce reimbursement by 7 percent for laboratory and portable x-ray services. This proposed rule will reduce reimbursement by approximately (\$495,632) for SFY 1999-00, (\$3,063,006) for SFY 2000-01, and (\$3,154,896) for SFY 2001-02.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition. As a result of the rate reduction, some providers may find it necessary to reduce staff or staff hours of work.

Ben A. Bearden  
Acting Director  
0004#085

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**

**Physician Services Reimbursement Reduction**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt the following rule under the Medical Assistance Program as authorized by R.S. 46:153 and 36:254 and pursuant to Title XIX of the Social Security Act and as directed by the 1999-2000 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 proposed rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing reimburses physician services in accordance with an established fee schedule for Current Procedural Terminology (CPT) codes, locally assigned codes and Health Care Financing Administration Common Procedure Codes (HCPC). Reimbursement for these services is a flat fee established by the Bureau minus the amount which any third-party coverage would pay. As a result of a budgetary shortfall, the Bureau determined it was necessary to reduce the reimbursement paid to physicians for specific procedure codes (*Louisiana Register*, Volume 26, Number 2). Reimbursement was reduced by 7 percent for selected locally-assigned HCPCS and the following CPT procedure codes: surgery codes (10040-69979), medicine

codes (90281-99199), evaluation and management codes (99201-99499), radiology codes (70010-79999), and pathology and laboratory codes (80048-89399). In addition, reimbursement for selected neonatal care CPT procedure codes (99295 and 99298) was reduced by 16 percent. Reimbursement for tonsillectomy and adenoidectomy CPT procedure codes was also reduced to the following amounts: \$425.25 (42821); \$405.00 (42825); \$438.75 (42826); \$408.38 (42830); and \$388.13 (42831). This action was taken to avoid a budget deficit in the Medical Assistance programs. The Bureau now proposes to adopt a rule to continue the provisions contained in the February 1, 2000 emergency rules.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed rule on the family has been considered. This proposed rule has no known impact on family formation, 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 reduces the reimbursement paid to physicians for specific professional services procedure codes. The reimbursement for selected locally-assigned Health Care Financing Administration Common Procedure Codes and the following Current Procedural Terminology procedure codes is reduced by 7 percent: surgery codes (10040-69979), medicine codes (90281-99199), evaluation and management codes (99201-99499), radiology codes (70010-79999), and pathology and laboratory codes (80048-89399). In addition, reimbursement for selected neonatal care CPT procedure codes (99295 and 99298) is reduced by 16 percent. Reimbursement for tonsillectomy and adenoidectomy CPT procedure codes is also reduced to the following amounts: \$425.25 (42821); \$405.00 (42825); \$438.75 (42826); \$408.38 (42830); and \$388.13 (42831).

The following physician services are excluded from this reduction in reimbursement fees: chemotherapy medications, prenatal and postnatal visits (CPT codes Z9004, Z9005 and Z9006), vaginal and cesarean deliveries, anesthesia services for vaginal and cesarean deliveries, tubal ligations, hemodialysis, and radiology oncology services.

Interested persons may submit written comments to the following address: Ben A. Bearden, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is the person responsible for responding to inquiries regarding this proposed rule. A public hearing on this proposed rule is scheduled for Friday, May 26, 2000 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.

David W. Hood  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Professional Services Program  
Physician Services Reimbursement Reduction**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that implementation of this proposed rule will reduce state program costs by approximately (\$1,328,320) for SFY 1999-00, (\$4,575,916) for SFY 2000-01, and (\$4,713,194) for SFY 2001-02. It is anticipated that \$160 (\$80 SGF and \$80 FED) will be expended in SFY 1999-00 for the state's administrative cost of promulgating 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 approximately (\$3,148,771) for SFY 1999-00, (\$10,925,155) for SFY 2000-01, and (\$11,252,909) for SFY 2001-02.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

Implementation of this proposed rule will reduce reimbursement to physicians by 7 percent for the performance of specific procedure codes. This proposed rule will reduce reimbursements by approximately (\$4,477,251) for SFY 1999-00, (\$15,501,071) for SFY 2000-01, and (\$15,966,103) for SFY 2001-02.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There is no known effect on competition. As a result of the rate reduction some physicians may find it necessary to reduce staff or staff hours of work.

David W. Hood  
Secretary  
0004#088

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Rehabilitation Center Services  
Reimbursement Reduction

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt the following rule under the Medical Assistance Program as authorized by R.S. 46:153 and 36:254 and pursuant to Title XIX of the Social Security Act and as directed by the 1999-2000 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 proposed rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing provides coverage and reimbursement for services rendered by rehabilitation

centers that are not part of a hospital, but are organized to provide a variety of outpatient rehabilitative services including physical, occupational, speech, hearing, and language therapies. Reimbursement for these services is a flat fee established by the Bureau minus the amount which any third-party coverage would pay. As a result of a budgetary shortfall, the Bureau determined it was necessary to reduce the reimbursement rates for rehabilitation center services by 7 percent (*Louisiana Register*, Volume 26, Number 2). The Bureau now proposes to adopt a rule to continue the provisions contained in the February 1, 2000 emergency rule.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed rule on the family has been considered. This proposed rule has no known impact on family formation, 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 reduces the reimbursement rates for services provided in a rehabilitation center by 7 percent. A rehabilitation center is a facility that is not part of a hospital, but is organized to provide a variety of outpatient rehabilitative services including physical, occupational, speech, hearing, and language therapies. This action is necessary to avoid a budget deficit in the Medical Assistance Program.

Interested persons may submit written comments to the following address: Ben A. Bearden, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is the person responsible for responding to inquiries regarding this proposed rule. A public hearing on this proposed rule is scheduled for Friday, May 26, 2000 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.

David W. Hood  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Rehabilitation Center Services  
Reimbursement Reduction**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that the implementation of this proposed rule will reduce state program costs by approximately (\$1,423) for SFY 1999-00, (\$18,236) for SFY 2000-01, and (\$18,783) for SFY 2001-02. It is anticipated that \$120 (\$60 SGF and \$60 FED) will be expended in SFY 1999-00 for the state's administrative expense for promulgation of this proposed rule and the final rule.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is anticipated that the implementation of this proposed rule will reduce federal revenue collections by approximately (\$3,455) for SFY 1999-00, (\$43,539) for SFY 2000-01, and (\$44,846) for SFY 2001-02.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Implementation of this proposed rule will reduce reimbursement by 7 percent for rehabilitation center services. This proposed rule will reduce reimbursement by approximately (\$4,998) for SFY 1999-00, (\$61,775) for SFY 2000-01, and (\$63,629) for SFY 2001-02.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition. As a result of the rate reduction, some providers may find it necessary to reduce staff or staff hours of work.

David W. Hood  
Secretary  
0004#087

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

**Targeted Case Management  
Services Reimbursement Reduction**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt the following rule under the Medical Assistance Program as authorized by R.S. 46:153 and 36:254 and pursuant to Title XIX of the Social Security Act and as directed by the 1999-2000 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 proposed rule is adopted in accordance with the Administrative Procedure Act, R. S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing provides reimbursement for targeted case management services rendered to the following targeted populations: Infants and Toddlers, High Risk Pregnant Women, HIV-Infected Persons and recipients in the Elderly and Disabled Adult Waiver. Reimbursement for these services is a fixed monthly rate for the provision of the core elements of case management services. As a result of a budgetary shortfall, the Bureau determined it was necessary to reduce the fixed monthly reimbursement rate for case management services provided to the above-referenced targeted populations by 7 percent (*Louisiana Register*, Volume 26, Number 2). The Bureau now proposes to adopt a rule to continue the provisions contained in the February 8, 2000 emergency rule. This action is necessary in order to avoid a budget deficit in the medical assistance programs.

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 reduces the fixed monthly reimbursement rate for targeted case management services provided to the following targeted populations by 7 percent. Infants and Toddlers, High Risk Pregnant Women, HIV-Infected Persons and recipients in the Elderly and Disabled Adult Waiver.

Interested persons may submit written comments to the following address: Ben A. Bearden, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is the person responsible for responding to inquiries regarding this proposed rule. A public hearing on this proposed rule is scheduled for Friday, May 26, 2000 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.

David W. Hood  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Targeted Case Management  
Services Reimbursement Reduction**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that the implementation of this proposed rule will reduce state program costs by approximately (\$26,974) for SFY 1999-00, (\$66,489) for SFY 2000-01, and (\$68,484) for SFY 2001-02. It is anticipated that \$120 (\$60 SGF and \$60 FED) will be expended in SFY 1999-00 for the state's administrative expense for promulgation of this proposed rule and the final rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will reduce federal revenue collections by approximately (\$64,020) for SFY 1999-00, (\$158,745) for SFY 2000-01, and (\$163,507) for SFY 2001-02.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Implementation of this proposed rule will reduce reimbursement by 7 percent for case management services rendered to the following targeted populations: Infants and Toddlers, High Risk Pregnant Women, HIV Infected Persons and Elderly and Disabled Adult Waiver recipients. This proposed rule will reduce reimbursement by approximately (\$91,114) for SFY 1999-00, (\$225,234) for SFY 2000-01, and (\$231,991) for SFY 2001-02.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition. As a result of the rate reduction, some case management agencies may find it necessary to reduce staff or staff hours of work.

David W. Hood  
Secretary  
0004#086

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Public Safety and Corrections Liquefied Petroleum Gas Commission

Requirements; Applications and Sketches of School Bus and Mass Transit Vehicles; Inspections; Installation of Liquefied Petroleum Gas Systems Used as Engine Fuel System for School Bus/Mass Transit Vehicles; Fueling  
(LAC 55:IX.107, 201, 203, 205, 207)

In accordance with the provisions of R.S. 49:950 et seq., the Administrative Procedure Act, and R.S. 40:1846 relative to the authority of the Liquefied Petroleum Gas Commission to make and enforce reasonable rules and regulations governing the storage, sale, and transportation of liquefied petroleum gases, notice is hereby given that the Commission proposes to amend its rules. The proposed rule changes have no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

The proposed rule changes will do eight things:

1. Will require a weighing device at locations which fill DOT specification cylinders of 100 lbs. or less liquefied petroleum gas capacity that are in commerce or transportation and require these devices to be tagged, inspected and checked for accuracy annually.

2. Will require an application/sketch for review and initial approval before installation of a liquefied petroleum gas system used as an engine fuel system for school bus/mass transit vehicles.

4. Will provide for two exceptions to the application/sketch review and initial approval process for a liquefied petroleum gas system used as an engine fuel system for school bus/mass transit vehicles.

5. Will require registration with the Commission, all school bus/mass transit vehicles which have a liquefied petroleum gas system used as an engine fuel system and require the annual renewal of this registration.

6. Will require a registration decal be affixed to all school bus/mass transit vehicles which have a liquefied petroleum gas system used as an engine fuel system and prohibit operation or fueling of a vehicle which does not have a current decal affixed.

7. Will require a final inspection by the Commission, on newly installed systems, on all school bus/mass transit vehicles which have a liquefied petroleum gas system used as an engine fuel system and require an annual inspection thereafter and prohibit the operation or fueling of a vehicle which has not met the inspection requirements.

8. Will prohibit the operation or fueling of all school bus/mass transit vehicles which have a liquefied petroleum gas system used as an engine fuel system, which do not meet the requirements of this Chapter or the requirements of Chapter 8 of the NFPA pamphlet 58 that the Commission has adopted.

#### Title 55

#### PUBLIC SAFETY

#### Part IX. Liquefied Petroleum Gas

#### Chapter 1. General Requirements

#### Subchapter A. New Dealers

#### §107. Requirements

A. - 5.b. ...

c. Each location of Class 1, Class 6 and Class 8 dealers, which fill DOT specification cylinders of 100 lbs. or less, liquefied petroleum gas capacity, that are in commerce or transportation, shall provide a suitable weighing device (scales). The Commission shall tag, inspect and check for accuracy the weighing device (scales) annually. A weighing device (scales) that have not been tagged, inspected and checked for accuracy shall not be used to determine the quantity of liquefied petroleum gas in cylinders.

6. - 13. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846

HISTORICAL NOTE: Adopted by the Department of public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, LR 1:315 (July 1975), LR 4:86 (March 1978), LR 7:633 (December 1981), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 11:557 (May 1985), LR 15:854 (October 1989), LR 16:1063 (December 1990), LR 20:1400 (December 1994), LR 24:461 (March 1998), LR 24:2311 (December 1998), LR 25:1262 (July 1999), LR 25:2410 (December 1999), LR 26:

#### Chapter 2. School Bus and Mass Transit Installations [formerly Chapter 12]

Editor's Note: This chapter applies to liquefied petroleum gas systems supplying liquefied petroleum gas to propel school buses and mass transit vehicles.

#### §201. Applications/Sketches and Approval of School Bus and Mass Transit Vehicles; Final Inspections; Registrations; Renewal Registrations

A. Prior to the initial installation of a liquefied petroleum gas system used as a motor fuel system on any school bus or mass transit vehicle, either public or private, an application/sketch shall be submitted to a Liquefied Petroleum Gas Commission inspector for review and initial approval. The name of the dealer making the installation must be stated on the application/sketch.

1. Exceptions:

a. When an original equipment manufacturer (OEM) made the installation of the liquefied petroleum gas system, the prior to initial installation review and initial approval requirement of Part A. is waived; however an application/sketch, registration, and final inspection must be performed prior to placing into service.

b. When the installation of the liquefied petroleum gas system is made out-of-state, the prior to initial installation review and initial approval requirement of Part A is waived; however the application/sketch, registration, and final inspection must be performed prior to placing into service.

B. After installation of the liquefied petroleum gas system but prior to placing into service, the vehicle(s) will be registered with the Liquefied Petroleum Gas Commission, by means of the application/sketch and evidenced by a registration decal affixed to the vehicle.

C. A renewal registration shall be made annually by the owner, between February 1 and April 30. Renewal registration forms will be mailed from the Liquefied Petroleum Gas Commission office to the previous year's registrants.

D. After installation of the liquefied petroleum gas system but prior to placing into service, a final inspection

shall be made by a Liquefied Petroleum Gas Commission inspector.

E. A liquefied petroleum gas dealer or owner shall not fuel any school bus/mass transit vehicle with liquefied petroleum gas to which a current registration decal is not permanently affixed.

F. It shall be a violation of the Commission rules and regulations for an owner to operate any school bus/mass transit vehicle which is propelled by liquefied petroleum gas, to which a current registration decal is not permanently affixed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 18:866 (August 1992), amended LR 24:471 (March 1998), LR 26:

### **§203. Inspections**

A. A final inspection by a Liquefied Petroleum Gas Commission inspector is required on all newly installed liquefied petroleum gas systems.

B. The Liquefied Petroleum Gas Commission reserves the right to make an inspection of a liquefied petroleum gas system at any time.

C. All school bus/mass transit vehicles with renewal registrations shall be inspected between May 1 and July 31 by a Liquefied Petroleum Gas Commission inspector. It shall be a violation of the Liquefied Petroleum Gas Commission rules and regulations to operate a school bus/mass transit vehicle without the required annual inspection.

D. A liquefied petroleum gas dealer shall not fuel any school bus/mass transit vehicle which has been condemned or placed out-of-service by the Liquefied Petroleum Gas Commission and notification published in an all dealer letter (A.D.).

E. No liquefied petroleum gas system shall be placed into service on any school bus/mass transit vehicle which does not comply with this Chapter and Chapter 8 of NFPA 58, that the commission has adopted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 18:866 (August 1992), amended LR 24:471 (March 1998), amended LR 26:

### **§205. Installation of Liquefied Petroleum Gas Systems Used as Engine Fuel Systems for School Bus/Mass Transit Vehicles**

A. Installation of a liquefied petroleum gas system used as an engine fuel system for school bus/mass transit vehicles shall be in accordance with the applicable sections of NFPA 58, Chapter 8, that the commission has adopted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 18:866 (August 1992), amended LR 24:471 (March 1998), amended LR 26:

The commission will hold a public hearing May 25, 2000, 1723 Dallas Drive, Baton Rouge, LA, at 8:30 a.m. in regard to these changes.

Written comments will be accepted through May 15, 2000 and should be sent to Charles M. Fuller at P.O. Box 66209, Baton Rouge, LA 70896. All interested persons will be

afforded an opportunity to be heard at the public hearing. A preamble has not been prepared for the intended actions.

Charles M. Fuller  
Director

## **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

### **RULE TITLE: Requirements; Applications and Sketches of School Bus and Mass Transit Vehicles; Inspections; Installation of Liquefied Petroleum Gas Systems Used as Engine Fuel System for School Bus/Mass Transit Vehicles; Fueling**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There will be minimal administrative costs to the Department of Public Safety in FY 00-01. There will be no implementation costs to any local governmental unit.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There will be a loss in revenues to the Liquefied Petroleum Gas Commission in FY 00-01 calculated to be \$1,900 for FY 00-01 and for each future year as a result of the proposed action. There will be no loss in revenues to any local governmental unit.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

There will be a decrease in costs to the owners of school buses and mass transit vehicles which have a liquefied petroleum gas system used as an engine fuel system. The decrease in their costs is calculated to be \$1,900 for FY 00-01 and for each future year. There will be no costs or economic benefit to any other group, person or non-governmental unit.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There will be no impact or effect on competition and employment because of the proposed actions.

Charles M. Fuller  
Director  
0004#028

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

## **NOTICE OF INTENT**

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

#### **Food Stamp Program—Quarterly Reporting (LAC 67:III.2013 and 2015)**

The Department of Social Services, Office of Family Support, proposes to amend the *Louisiana Administrative Code*, Title 67, Part III, Subpart 3, Food Stamps.

In an effort to improve program administration and lessen the burden of responsibility on recipients, the agency requested and received approval from the United States Department of Agriculture, Food and Nutrition Service, Waiver #990070, under the authority of 7 CFR 273.3(c)(1)(ii), to waive the requirement that certain food stamp households report changes within ten days of the date of the change and to otherwise implement a quarterly reporting system for all non-public assistance (NPA) households with earned income (with some exceptions).

This notice, therefore, proposes the requirement of quarterly reporting for the Food Stamp Program in Louisiana.

The agency also proposes to repeal §2013. Monthly Reporting and Retrospective Budgeting which is no longer in effect.

**Title 67**  
**SOCIAL SERVICES**  
**Part III. Office of Family Support**  
**Subpart 3. Food Stamps**

**Chapter 19. Certification of Eligible Households**  
**Subchapter S. Quarterly Reporting**

**§2013. Monthly Reporting and Retrospective Budgeting**

Repealed

**§2015. Quarterly Reporting**

A. All NPA households with earned income will submit a reporting form to the agency on a quarterly basis, with the following exceptions:

1. migrant or seasonal farmworker households;
2. households in which all members are homeless; or
3. households whose only income is from self-employment.

B. Households required to quarterly report will be assigned a certification period of twelve months.

C. All households in quarterly reporting are required to:

1. timely provide a completed quarterly report form and all necessary verification; and
2. report current household circumstances and changes which the household knows will occur.

E. Failure to provide a complete quarterly report form and verification will result in case closure.

F. Benefits will be determined prospectively based on verified circumstances.

G. Any change in benefits as a result of quarterly reporting will be effective the month following the month in which the quarterly report was required.

H. Other changes will be processed in accordance with §1999. Reduction or Termination of Benefits.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.12(a) and 273.3(c)(1)(ii).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:

Interested persons may submit written comments by May 25, 2000, to: Vera W. Blakes, Assistant Secretary, Office of Family Support, Box 94065, Baton Rouge, Louisiana, 70804-9065. She is the responding authority for inquiries regarding this proposal.

A public hearing on the proposed rule will be held on May 25, 2000, at the Department of Social Services, A.Z. Young Building, Second Floor Auditorium, 755 Third Street, Baton Rouge, at 9:00 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call (225) 342-4120 (Voice and TDD).

**Family Impact Statement**

I. What effect will this rule have on the stability of the family? This rule would enhance access to the food stamp program for low income families by eliminating the requirement of face-to-face interviews every three months.

II. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? This rule will have no effect on the authority and rights of persons regarding the education and supervision of their children.

III. What effect will this have on the functioning of the family? This rule will have no effect on the functioning of the family.

IV. What effect will this have on family earnings and family budget? This rule will result in less interruption in time away from a recipient's employment by alleviating the requirement of a redetermination interview every three months.

V. What effect will this have on the behavior and personal responsibility of children? This rule will have no effect on the behavior and personal responsibility of children.

VI. Is the family or local government able to perform the function as contained in this proposed rule? No, the Food Stamp Program is strictly a state function.

J. Renea Austin-Duffin  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT**  
**FOR ADMINISTRATIVE RULES**  
**RULE TITLE: Food Stamp Program—Quarterly**  
**Reporting**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The cost of implementation of this rule is based on the mailing of approximately 16,900 quarterly reporting forms per month by required households, that is, \$ .41 for the postage-paid return envelope that will be provided with each form. This results in estimated costs of \$69,290 in FY 00/01 and \$83,148 each subsequent year.

Staff time, printing of forms, and other associated costs required to perform tasks associated with quarterly reporting will be offset by the fact that households in quarterly reporting will no longer require three-month redeterminations of eligibility, thereby eliminating the scheduling, the printing and mailing of the application and appointment letter, and the face-to-face interview required for redeterminations. The routine cost of publishing the rule and printing policy revisions is minimal and is within the current budget.

There is no cost or savings to local governmental units.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no effect on revenue collection of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Those persons directly affected are food stamp recipients in Non-Public Assistance households with earned income who will be required to submit a quarterly report on the household circumstances. Since these households will no longer be redetermined every three months or be required to report changes within ten days, many recipients will not have to take time off from jobs or spend transportation money to attend an interview. There are no non-governmental groups affected by the proposed rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)

This proposed action has no impact on competition or employment.

Vera W. Blakes  
Assistant Secretary  
0004#093

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Social Services  
Office of Rehabilitation Services**

Rehabilitation Services Applicant/Client Appeal Rights  
(LAC 67:VII.107)

In accordance with the provisions of R.S. 49:953B, the Administrative Procedure Act, the Department of Social Services, Louisiana Rehabilitation Services, is amending its Vocational Rehabilitation Services Policy Manual: Section 107.Applicant/Client Appeal Rights.

The rule governing Applicant/Client Appeal Rights outlines the due process policy for anyone who is dissatisfied with a decision made by the agency.

This rule is being amended as the Louisiana Rehabilitation Services' (LRS) appeals process has undergone a significant change as a result of the 1998 amendments to the Rehabilitation Act. The fourth level of review by the Director of LRS was removed. However, it is within the express authority of the Rehabilitation Act for LRS to implement this level of review. It is significant to note that although the new amendments do allow for a fourth level of review, the characteristic of this fourth level of review is that it must be conducted, at a minimum, by the DSS Secretary.

Currently, the final administrative level of appeal is the impartial hearing officers, who are required to review agency determinations and issue decisions based upon the provisions of the State Plan, the Rehabilitation Act (including regulations implementing the Act) and State regulations or policies that are consistent with the federal requirements specified in the Act.

DSS General Counsel has strongly recommended to LRS to put the fourth level review in place, and LRS did so with an emergency rule effective February 25, 2000. This recommendation was necessary due to the influx of controversial rulings from impartial hearing officers, which have exposed the agency to sanctions or penalties by the United States as being contrary to the State Plan, the Rehabilitation Act (including regulations implementing the Act) and State regulations or policies that are consistent with the federal requirements specified in the Act. These unlawful rulings have not been based upon the Act's authorities (including specific guidance and directives by RSA), but have evidenced the hearing officers' subjective interpretation of the substantive law.

Because the Rehabilitation Act requires implementation of the hearing officer's decision pending a civil action for review, LRS may be mandated to comply with and/or implement a decision which violates the law and policy of the State Plan, the Rehabilitation Act (including regulations implementing the Act) and State regulations or policies that

are consistent with the federal requirements specified in the Act, as well as a disregard of a specific directive of Rehabilitation Services Agency (RSA), the federal agency authorized to implement and administer the provisions of the Act. However, said compliance with the hearing officer's decision would subject Louisiana Rehabilitation Services to an audit exception by RSA and concurrent sanctions. Moreover, such unauthorized spending, when paired with the resultant sanctions/loss of federal funding, would greatly reduce the services available and imperil the public health, safety, and welfare of the State's VR population. These unlawful decisions have and will result in VR Program abuse, as numerous clients have been advised to resort to the appeals process in bad faith in order to take advantage of these beneficial rulings.

RSA has scheduled a compliance review of LRS for April 10, 2000. LRS has been informed by RSA that agency action in accord with said hearing officers' decisions constitutes "substantial compliance failure"; under the Rehabilitation Act, said failures will subject LRS to penalties and sanctions.

The LRS policy manual is referenced in LAC 67:VII. as follows.

**Title 67**

**SOCIAL SERVICES**

**Part VII. Rehabilitation Services**

**Chapter 1. General Provisions**

**§107. Applicant/Client Appeal Rights**

A. - B.11.f. ...

C. Fair Hearing

1. The fair hearing process may be requested by applicants/clients to appeal disputed findings of an administrative review; at any point after a mediation session; or as a direct avenue of appeal bypassing the administrative review or the mediation process option. The fair hearing will be conducted by an Impartial Hearing Officer after receipt of the initial written request. At the time the fair hearing is requested, the applicant/client shall be offered mediation as an option to resolve a dispute if mediation has not been exercised already.

2. An Impartial Hearing Officer shall be selected on a random basis to hear a particular case by agreement between the Louisiana Rehabilitation Services Director and the applicant/client. This officer shall be selected from among a pool of qualified persons identified jointly by Louisiana Rehabilitation Services and members of the Louisiana Rehabilitation Council. The Impartial Hearing Officer shall provide the decision reached in writing to the applicant/client and to Louisiana Rehabilitation Services as expeditiously as possible.

3. All applicants/clients must be provided adequate notification of appeal rights at the time of application, development of the Individualized Plan for Employment, and upon reduction, suspension, or cessation of vocational rehabilitation services. Services will continue during the fair hearing process unless the services being provided under the current Individualized Plan for employment were obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the client.

4. In order to insure that the applicant/client is afforded the option of availing themselves the opportunity to

pursue a fair hearing, adequate notification by the counselor and/or Regional Manager must include:

- a. the agency's decision (inclusive of an administrative review and/or mediation agreement, if conducted);
- b. the basis for, and effective date of, that decision;
- c. the specific means for appealing the decision;
- d. the applicant's/client's right to submit additional evidence and information, including the client's right to representation at the fair hearing;
- e. advise the applicant/client of the Client Assistance Program and how they can access the program, including the telephone number; and
- f. the means through which a fair hearing may be requested, including the name and address of the regional manager.

*Note:* All fair hearings must be conducted in a manner which insures that the proceedings are understood by the applicant/client.

#### D. Review of Fair Hearing Decisions

1. The impartial review for decisions rendered by impartial hearing officers is the final level of appeal within the Department of Social Services regarding disputes arising within Louisiana Rehabilitation Services. Subsequent to a decision being reached as a result of the impartial review by the Department of Social Services, any further review of the issue by the applicant/client (or, as appropriate, the applicant/client's representative) or the Agency must be by civil action through the public court system.

2. The applicant/client or the Agency can request a review of an Impartial Hearing Officer's decision by making a written request to the Secretary of the Department of Social Services within statutory guidelines. The Secretary cannot delegate the responsibility for making this final decision to any officer or employee of Louisiana Rehabilitation Services. The applicant/client and the Agency shall be provided an opportunity to submit additional evidence and information relevant to the final decision.

3. The Department of Social Services' Secretary may not overturn or modify a decision of an Impartial Hearing Officer, or part of such a decision, that supports the position of the applicant/client unless the Secretary determines, based on clear and convincing evidence, that the decision of the Impartial Hearing Officer is clearly erroneous on the basis of being contrary to the State Plan, the Rehabilitation Act (including regulations implementing the Act) or any State regulation or policy that is consistent with the federal requirements specified in the Act.

4. The Secretary shall provide the decision reached in writing to the applicant/client and to Louisiana Rehabilitation Services. This decision shall include a full report of the findings and grounds for the decision.

E. Civil Action - Any party aggrieved by a final decision from an impartial review by the Department of Social Services may bring civil action for review of such decision. The action may be brought in any state court of competent jurisdiction or in district court of the United States of competent jurisdiction without regard to the amount in controversy. If a party brings a civil action, the final decision of the Department of Social Services shall be implemented pending review by the court. In any action brought under this subsection, the court shall:

1. receive the records relating to the hearing;
2. hear additional evidence at the request of a party to the action; and
3. base the decision of the court on the preponderance of the evidence, shall grant such relief as the court determines to be appropriate.

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

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 17:891 (September 1991), amended LR 20:317 (March 1994), LR 21:189 (February 1995), amended LR 25:1266 (July 1999), amended LR 26:

#### **Family Impact Statement**

The Department of Social Services, Louisiana Rehabilitation Services hereby issues this Family Impact Statement: The proposed rule for the Vocational Rehabilitation Policy Manual, Applicant/Client Appeal Rights will have no known impact on family formation, stability, and autonomy, as set forth in R.S. 49:972.

Interested persons may submit written comments for 40 days from the date of this publication to May Nelson, Director, Louisiana Rehabilitation Services, 8225 Florida Boulevard, Baton Rouge, LA, 70806-4834. Ms. Nelson is responsible for responding to inquiries regarding the proposed rule.

Public hearings will be conducted at 10:00 a.m. on Wednesday, May 24, 2000, as follows: Baton Rouge, LRS Regional Office, 3651 Cedarcrest Avenue; Alexandria, LRS Regional Office, 900 Murray Street; Shreveport, LRS Regional Office, 1525 Fairfield Avenue; New Orleans, LRS Regional Office, 3500 Canal Street.

Individuals with disabilities who require special services should contact Judy Trahan, Program Manager, Louisiana Rehabilitation Services, at least 14 working days prior to the hearing if special services are needed for their attendance. For information or assistance, call 225-924-4131, or 1-800-737-2958, or 1-800-543-2099 for voice and TDD.

J. Renea Austin-Duffin  
Secretary

#### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Vocational Rehabilitation Services Policy Manual/ Applicant/Client Appeal Rights**

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Cost is based on 25 fourth level reviews at a cost of \$65 per hour for an estimated four hours per review. The first year is pro-rated to cover four months. The cost is \$1167 the first year and \$6500 each year thereafter.

This fourth level review will require one additional step by Louisiana Rehabilitation Services and will not cause a major impact. Department of Social Services will contract with one individual to review these decisions. Louisiana Rehabilitation Services will provide the money for said contract. The reviewer will be paid at a rate of \$65 per hour. Total expenditure for the contract will be dependent on time required for review on a case by case basis. It is estimated that approximately 20-25 requests for fourth level review of impartial hearing officers decisions might occur on an annual basis.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no proposed impact on local government units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The rule will affect any applicant/client or the LRS' agency, if either or both are in disagreement with an impartial hearing officer's report and elects to request the fourth level review.

This fourth level review will require one additional step by LRS and will not cause a major impact. DSS will contract with one individual to review these decisions. LRS will provide the money for said contract. The reviewer will be paid at a rate of \$65 per hour. Total expenditure for the contract will be dependent on time required for review on a case by case basis. It is estimated that approximately 20-25 requests for fourth level review of impartial hearing officers decisions might occur on an annual basis.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no projected impact on competition and employment in public or private sectors.

May Nelson  
Director  
0004#091

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Social Services  
Office of Rehabilitation Services  
Commission for the Deaf**

State Sign Language Interpreter and Cued  
Speech Transliterator Certification Standards  
(LAC 67:VII.Chapter 13)

Editor's Note: §1303 contained information which was valid for one year. That time has expired and this outdated section has been deleted.

In accordance with the provisions of R.S. 49:950 et seq., the Administrative Procedure Act. the Department of Social Services, Louisiana Rehabilitation Services (LRS), Louisiana Commission for the Deaf is adopting revisions to the rules affecting the certification of sign language interpreters and cued speech transliterators.

The purpose of this Notice of Intent is to provide revisions to the rules governing the procedures/standards used in the evaluation and certification of sign language interpreters and cued speech transliterators and list the qualifications of individuals who are eligible for certification at various skill levels.

**Title 67**

**SOCIAL SERVICES**

**Part VII. Rehabilitation Services**

**Chapter 13. State Sign Language Interpreter and  
Cued Speech Transliterator Certification  
Standards**

**§1301. Certification Standards**

A. Certification Statement. All individuals who use the title "Sign Language Interpreter" must be certified by and registered with the Louisiana Commission for the Deaf.

1. Recognition of situational specialties will require action of the appropriate subcommittees of the Interpreter Certification Board.

a. Qualifications for Certification

- i. be at least 18 years of age; and
- ii. possess a high school diploma/GED; and
- iii. submit completed application forms and required documentation; and
- iv. pass appropriate examination(s); and
- v. possess no felony or misdemeanor convictions for offenses which directly relate to the duties and responsibilities of an interpreter/transliterator; and
- vi. abide by state laws, rules and regulations; and
- vii. abide by the Registry of Interpreters for the Deaf, Inc. (RID) Code of Ethics; and

b. in addition, applicants shall agree to:

- i. sign a release of information form allowing LCD to gain examination results from examining agency(ies); and
- ii. pay membership and related application fees to contracted examining agency(ies).

c. Application. An individual interested in certification must contact the Louisiana Commission for the Deaf (LCD).

B. Examinations. The State Interpreter/Transliterator Certification Program includes the following:

1. Screening. To begin the certification process, the candidate must successfully pass a screening instrument which will be determined by the ICB as approved by the LCD.

2. Written/Verbal/Performance Components. Upon successful completion of screening, the candidate will be eligible for the written examination(s), which will assess knowledge of the general field of deafness including deaf culture; the profession of interpreting/transliterating for persons who are deaf, deaf-blind or hard of hearing and application of the RID Code of Ethics.

a. Upon successful completion of the written examination(s), the candidate will be eligible for the verbal and/or performance examination(s).

b. The verbal examination(s) may include but not be limited to assessing knowledge of the general field of deafness including deaf culture, the profession of interpreting/transliterating and application of the RID Code of Ethics.

c. The performance examination will assess the candidate's ability to interpret and/or transliterate in the appropriate mode(s).

3. Examination Instrument. The Interpreter Certification Board will determine the examination(s) to be administered as approved by the Louisiana Commission for the Deaf.

4. Examination Dates. Administration of examination(s) will be scheduled by the Interpreter Certification Board.

5. Notification of Examination(s) Results. Individual candidates will be notified of results. Results of any part of the examination(s) will be maintained in confidential files, however, successful completion of the interpreting/transliterating certification program will be a matter of public record.

6. Re-Application. Persons who do not successfully pass any section(s) of the examination may apply for re-examination of said section(s) after a waiting period as outlined in the State Interpreter/Transliterator Certification Program Procedures Manual.

7. No Shows. Failure to appear at an examination site at the appropriate time, for other than just cause as determined by ICB, will result in being placed at the bottom of the waiting list for the next available date.

C. Certificates

1. Certificate Criteria. The candidate:

a. must successfully complete the written examination(s); and

b. must successfully complete the verbal and/or performance examination(s);

c. must successfully complete a performance examination;

d. will be awarded various levels as outlined in the procedure manual of the Interpreter Certification Board.

2. Certificate Duration/Maintenance. Certificates shall be continuous as long as the individual interpreter meets certificate maintenance requirements as outlined in the State Interpreter/Transliterator Certification Program Procedures Manual. Certificate maintenance requirements shall include but not be limited to professional growth and development, and field work.

a. Certificates shall be terminated when maintenance requirements are not met, but may be restored as outlined in the State Interpreter/Transliterator Certification Program Procedures Manual.

3. Recognition. Recognition of interpreting/transliterating certificates shall be approved as outlined in the State Interpreter/Transliterator Certification Program Procedures Manual.

4. Appeals. Individuals who disagree with the examination procedure and/or decisions of the Interpreter Certification Board have the right of appeal as outlined in the State Interpreter/Transliterator Certification Program Procedures Manual.

AUTHORITY NOTE: Promulgated in accordance with R.S.46:2351-2354 and 46:2361-2374.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Louisiana Rehabilitation Services, Louisiana Commission for the Deaf, LR 17:389 (April 1991), amended LR 18:968 (September 1992), LR 19:304 (March 1993), LR 19:905 (July 1993), LR 21:838 (August 1995), LR 26:

**§1303. Repealed**

**Family Impact Statement**

The Department of Social Services, Louisiana Rehabilitation Services, Louisiana Commission for the Deaf hereby issues its Family Impact Statement: Proposed revisions to the rule governing the procedures/standards used in the evaluation and certification of sign language interpreters and cued speech transliterations will have no known impact on family formation, stability, and autonomy as set forth in R.S. 49:972.

Additional copies of this entire text of the revised policy manual may be obtained at Louisiana Rehabilitation Services headquarters, 8225 Florida Boulevard, Baton Rouge, LA, at each of its nine regional offices, and at the Office of the State Register, 1051 North Third Street, Baton Rouge, LA.

Interested persons may submit written comments for 40 days from the date of publication to May Nelson, 8225 Florida Blvd., Baton Rouge, LA 70806. She is responsible for responding to inquiries regarding the proposed rule.

J. Renea Austin-Duffin  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: State Sign Language Interpreter and  
Cued Speech Transliterator Certification Standards**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO  
STATE OR LOCAL GOVERNMENT UNITS (Summary)

There is no implementation cost in order to implement this proposal.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE  
OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no anticipated increase or decrease in revenue.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO  
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL  
GROUPS (Summary)

There will be no change in the estimated cost and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)

There is no proposed change on competition and employment in the public or private sectors.

May Nelson  
Director  
0004#092

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of the Treasury  
Board of Trustees of the State Employees'  
Retirement System**

Retiree Election, Purchase of Military Service,  
Disability Eligibility and Spousal Consent,  
Excess Benefit Plan and Optional Retirement Plan  
(LAC 58:I.503, 701, 2513, 2903,  
3101-3115, and 3501-3519)

Under the authority of LSA-R.S. 11:515 and in accordance with LSA-R.S. 49:951 et seq., the Department of the Treasury, Board of Trustees of the Louisiana State Employees' Retirement System ("LASERS") advertises its intent to amend and reenact LAC 58.I.503, 701, 2513, and 2903, and to enact LAC 58.I.3101-3115 and 3501-3519. Chapter 31 is being redesignated as Chapter 35. The proposed amendments to the rules change the election rules for retired member trustees, the purchase of military service, certification of continuing eligibility for disability, and instances where spousal consent is required. The proposed enactments establish rules for the excess benefit arrangement and the optional retirement plan. The proposed amendments and enactments have no impact on family formation, stability, and autonomy as set forth in R.S. 49:972.

**Title 58**  
**RETIREMENT**

**Part 1. State Employees' Retirement**

**Chapter 5. Election of Retired Member Trustees**

**§503. Election Rules**

A. A candidate for a position of retired member trustee on the Board of Trustees must be a retired member of the system (not including retired status under the Deferred Retirement Option Plan) by the date on which nominations close. The Board of Trustees shall accept the name and Social Security number of every candidate nominated by petition of 25 or more retired members of the system and shall place the name of such candidates on the ballot, provided each such candidate meets the requirements for trustee. The petitioning retired members' signatures must be accompanied by their Social Security numbers. All nominations for the Board of Trustees election must be in the office of the Retirement System no later than the second Tuesday in July, close of business (4:30 p.m. Central Daylight Savings Time).

B. - K. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 23:996 (August 1997), LR 25:1278 (July 1999), LR 26:

**Chapter 7. Purchase of Military Service**

**§701. Purchase of Military Service**

A maximum of four years of credit for military service may be purchased by active members who rendered military service in accordance with R.S. 29:411, 412, and 415.1, provided the active member received a discharge other than dishonorable. This provision shall not be applicable to DROP participants (R.S. 29:415.1).

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515 and R.S. 11:153.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 26:

**Chapter 25. Procedures for Processing Disability**

**Applications**

**§2513. Certification of Continuing Eligibility**

A. LASERS may require a disability retiree to undergo a medical examination once each year during the first five years following the disability retirement, and once in every three-year period thereafter until the retiree has reached the equivalent age of regular retirement.

B. LASERS shall schedule the appointment with a State Medical Board or appointed alternate physician and notify the disability retiree of the appointment time and place in writing. LASERS must pay the cost of this examination. If the retiree fails to appear for this examination and the physician charges a cancellation fee, the retiree shall be responsible for this fee.

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 24:1959 (October 1998), LR 26:

**Chapter 29. Spousal Consent**

**§2903. Instances where Spousal Consent is Not Required**

A. The following list sets out those instances where spousal consent is not necessary and will not be required:

1. the spouses are divorced, in which case LASERS needs a certified copy of a Judgment of Divorce;

2. - 3.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 26:

**Chapter 31. Excess Benefit Arrangement**

**§3101. Participation**

All retired members and beneficiaries of the system whose retirement or survivor or beneficiary benefits from the system for a plan year have been limited by IRC Section 415 are participants in this plan. Participation in the plan is determined for each plan year. Participation in the plan will cease for any plan year in which the retirement benefit of a member of the system or a survivor or beneficiary is not limited by IRC Section 415.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 26:

**§3103. Benefit**

A participant in the plan shall receive a monthly benefit equal to the difference between the participant's monthly retirement benefit otherwise payable from the system prior to any reduction or limitation of IRC Section 415 and the actual monthly retirement benefit payable from the system as limited by IRC Section 415. The monthly benefit shall be subject to withholding for any applicable income or employment taxes. The form of the benefit paid to a participant from the plan shall be the same as otherwise selected by the participant and payable by the system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 26:

**§3105. Contributions**

A. The system shall determine the required contribution to pay plan benefits for each plan year. The required contribution for each plan year shall be the total amount of benefits payable to all participants and their survivors or beneficiaries and such amount as determined by the system to pay the administrative expenses of the plan and the employer's share of any employment taxes on the benefits paid from the plan.

B. The required contributions as determined in the preceding subsection shall be paid into the plan fund from an allocation of the employer contributions paid to the system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 26:

### **§3107. Excess Plan Fund**

Contributions to the plan shall be deposited on a monthly basis in a separate fund established and administered by the system. This fund is intended to be exempt from federal income tax under IRC Sections 115 and 415(m)(1).

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 26:

### **§3109. Funding Assets**

The benefit liabilities of the plan shall be funded on a month to month basis. The fund established hereunder shall not be accumulated to pay benefits payable in future months. Any assets of the fund not used for paying benefits for a current month shall be used, as determined by the system, for the payment of administrative expenses of the plan for future months or paid to the system as an additional employer contribution.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 26:

### **§3111. Non-Assignability of Benefits**

The benefits payable under the plan may not be assigned or alienated by a participant, except as otherwise permitted for benefits payable by the system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 26:

### **§3113. Plan Administration**

The system shall have the authority to administer the plan as provided at LRS 11:454.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 26:

### **§3115. Retirement Benefit**

Any and all payments made pursuant to this plan shall be considered part of a retirement benefit as provided for any member, survivor or beneficiary of the system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 26:

## **Chapter 35. Optional Retirement Plan**

### **§3501. Plan Year**

The Plan Year for the Optional Retirement Plan ("ORP") shall be July 1st through June 30<sup>th</sup>.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR

### **§3503. Participation**

Any unclassified state employee who is appointed by a statewide elected official and whose appointment is subject to confirmation by the Louisiana Senate and any unclassified state employee who is a member of the immediate staff of any such employee, and the chief executive officer of the

State Group Benefits Program are eligible to participate in the ORP.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 26:

### **§3505. Election to Participate**

An irrevocable election to participate in the ORP must be made in writing and filed with System within sixty days after the eligible employee begins work. Elections shall be effective as of the date of appointment. If an eligible employee fails to make an election to participate in the ORP within sixty days of appointment, he shall become a member of the defined benefit plan as of the date of appointment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 26:

### **§3507. Employee Contributions**

Each participant in the ORP shall contribute monthly the same amount that a regular member would have contributed under LRS 11:62(5)(e). This amount shall be forwarded to the ORP provider, less an administrative cost that shall be established by LASERS. The initial cost shall be set at 1% of employee contributions and shall be adjusted to reflect the actual cost incurred by LASERS to perform this function.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 26:

### **§ 3509. Employer Contributions**

Each employer agency shall contribute to LASERS on behalf of each participant in the ORP the same amount that would have been contributed to the defined benefit plan. LASERS shall pay over to the ORP provider an amount equal to the employer's portion of the normal cost contributions as set forth in the actuarial valuation of the retirement system. LASERS shall maintain that portion of the employer's contribution, which applies to the unfunded accrued liability, which exceeds the employer's portion of the normal cost contribution. LASERS may also retain an additional portion of the employer contributions for any adverse actuarial impact as a result of employees participating in the ORP in accordance with R.S. 11:502.3 B.(3).

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 26:

### **§3511. ORP Provider**

The System shall provide no more than three providers, selected by a competitive process, for participants to utilize in selecting investment options for the employee and employer contributions that are provided for by the preceding sections.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 26:

**§3513. Investment Options**

The investment options available to participants shall be those as established by the ORP provider and selected by the ORP participant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 26:

**§3515. Benefit Obligations**

All benefits payable to participants under the ORP shall be the sole obligation of the ORP provider to which contributions are made, and shall not be the obligation of LASERS. Payments to participants or their beneficiaries shall be made by the ORP provider and not LASERS in accordance with the contracts approved for use in the ORP. Participants in the ORP shall not be entitled to any benefits under the defined benefit plan, and once a choice is made by a participant to participate in the ORP, that individual will be ineligible to participate in the defined benefit plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 26:

**§3517. Distribution**

Distribution from the ORP to participants shall only be made after termination of employment with the state of Louisiana in accordance with applicable Internal Revenue Code provisions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 26:

**§3519. Sunset**

Currently the law provides that the authority to enroll eligible employees in the ORP shall terminate on July 1, 2001. Those eligible employees who enroll or transfer prior to that date shall continue participation in the ORP in accordance with the provisions of the ORP even if the Plan actually sunsets.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 26:

**Chapter 35. Repeal of Prior Rules**

**§3501. Repeal of Prior Rules**

All rules and regulations adopted by LASERS prior to the effective date of this rule are hereby repealed in their entirety.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended, LR. 26:

Interested persons may submit written opinions, suggestions or data to Kevin P. Torres, General Counsel, Louisiana State Employees' Retirement System, 8401 United

Plaza Boulevard, Room 145, Baton Rouge, Louisiana 70809  
4:30 p.m. through May 30, 2000.

Glenda Chambers  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Retiree Election, Purchase of Military Service, Disability Eligibility and Spousal Consent, Excess Benefit Plan and Optional Retirement Plan**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
No implementation costs to the state or local governmental units are anticipated because of the proposed rules.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
These regulations will have no impact on revenue collections of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
There are no estimated cost and/or economic benefits that should effect any persons or nongovernmental group as a result of these rules.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There is no estimated impact on competition and employment as a result of these rules.

Glenda Chambers  
Executive Director  
0004#018

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Transportation and Development  
Office of Highways/Engineering**

Roadside Vegetation Management  
(LAC 70:III.Chapter 7)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950, et seq., notice is hereby given that the Department of Transportation and Development intends to amend a rule entitled "Roadside Vegetation Management," in accordance with R. S.47:820.6. This proposed amendment to an existing rule has no known impact on family formation, stability, and autonomy as described in R. S. 49:972.

**Title 70  
TRANSPORTATION**

**Part III. Highways/Engineering**

**Chapter 7. Roadside Vegetation Management**

**' 701. Introduction**

A. The authority of this manual is given in Act No. 682 of the Regular Session of the State Legislature of 1989. Under normal budgetary conditions, the vegetation control guidelines as described herein should be followed as closely as possible. However, during times of severe budget

restraints when state revenues are not available to fund this vegetation control policy, it may be necessary to adjust guidelines to operate within the reduced budget. Items addressed in this manual include: Guidelines and Categories of Roadside Vegetative Maintenance, Herbicides, Wildflowers and Landscaping. Deviation from policies in this manual must have written approval of the DOTD Chief Landscape Architect and the DOTD Chief Engineer. Roadside vegetative maintenance guidelines are intended to accomplish the following objectives:

1. provide for safety of the traveling public;
2. blend the roadside with adjacent land uses;
3. improve aesthetic quality;
4. reduce erosion;
5. increase efficiency of maintenance operations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:820.6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 18:204 (February 1991), amended LR 26:

### **' 703. Guidelines and Categories of Roadside Vegetative Maintenance**

#### **A. General Conditions for all Highway Systems**

1. DOTD will encourage the growth, planting and preservation of wildflower areas.

2. The District Roadside Development Coordinator shall monitor and coordinate planting of all wildflower areas. He will record locations of the plantings on DOTD Wildflower Inventory form and return them to Headquarters for placement in the master file.

3. Wildflowers may be planted to within 30 feet of the roadway on multi-lane systems and 15 feet on two-lane facilities or the back of the required drainage channel, whichever is greater. Wildflowers that have naturalized and are 15 feet or more from the travel lane should be allowed to remain. Every effort should be made to mow around them and avoid spraying herbicides unless it is spot treatment to eliminate certain weed species. Wildflowers may be planted in medians providing that they do not interfere with sight distances. Naturalized species occurring in wet areas such as iris, lilies and cattails will be allowed to remain when they do not obstruct drainage. The District Maintenance Engineer will decide when plants are obstructing drainage or sight distances and will take the necessary action to correct the deficiency.

4. Remove litter prior to mowing designated areas. For roads in the Adopt-A-Road program, it would be beneficial to contact the sponsor agency and advise them of the mowing schedule in order for them to assist in the removal of litter prior to the mowing operation.

5. Sight distance at horizontal curves, vertical curves, intersections, railroad crossings, signs, signal lights, delineators, hazard markers and warning devices should be clear of obstructions. Sight distance can be obtained on the inside of horizontal curves by mowing the area 30 feet from the edge of the surface or from the edge of the surface to the right-of-way line or from the edge of the surface to the fence line, whichever is the shortest distance. Transition should begin 150 feet prior to the beginning and end of the curve. All vegetation shall be maintained to permit clear visibility for all regulatory traffic signs. Trim or remove trees that interfere with proper sight distance or side and overhead clearance.

6. All vegetation shall be maintained to permit clear visibility for all regulatory traffic signs. Trim or remove trees that interfere with proper sight distance, or side and overhead clearance.

7. All dead trees or leaning trees with weakened root systems within DOTD rights-of-way which may endanger traffic by falling across the highway shall be removed and disposed of in a timely manner. Stumps within a mowable area are to be removed to ground level with a stump removing machine. If the stumps are located in an area designated not to be mowed, they may remain but should be cut to within 5 inches of ground level.

8. In order to ensure proper drainage, mow to the top of backslopes. When ditch bottoms are inaccessible and impeding drainage, treat unwanted vegetation with an approved herbicide labeled for use over water.

9. Mowing heights should be 5-6 inches; shorter cutting heights may cause stress on the vegetation and damage to equipment. Do not mow during long rainy spells and when the right-of-way is too wet. Mowing during these times will cause rutting and possibly cause erosion in the future.

10. Observe and initiate appropriate erosion control procedures when necessary.

11. General herbicide treatment is to be confined to an area of approximately 30 foot widths from the edge of all roadways where right-of-way is available or to the back of the required drainage channel to ensure proper drainage. Spot treatment is allowable beyond this area.

12. Treat pavement edges, paved medians, riprap areas and areas around delineators, guardrails and signs with appropriate herbicide. Treat designated areas of roadsides with appropriate herbicide two weeks prior to mowing cycle to eliminate noxious grasses and weeds. Some areas may need hand trimming because of herbicide restrictions. Prior to treating rights-of-way on federally owned lands, obtain the proper authorization from the federal agency having jurisdiction and make herbicide applications in accordance with their guidelines. Do not spray herbicides in designated or native stands of wildflowers unless absolutely necessary to control weed infestation. When treating unwanted vegetation in wildflower areas, every effort should be made to spot treat the unwanted vegetation.

13. When practical, every attempt should be made to blend the highway right-of-way with the adjacent land uses. For example, forest lands should extend into the right-of-way, subject to clear zone requirements, and rights-of-way adjacent to crop and pasture lands should remain relatively open.

**B. Urban (Highway Systems) Urban** shall mean within the recognized limits of small towns, villages and municipalities as well as incorporated areas of cities.

1. Maintain all rights-of-way by using a minimum cutting height of five inches. A maximum height of 8 inches will be allowed prior to mowing.

2. Remove all dead ornamental plants and replace during the proper planting season with appropriate type of plant.

3. Wildflowers may be planted in large interchange areas and shall not be mowed until the mature seed has set. Utilize the 5-inch minimum mowing height up to the limits of the wildflower planting area. Wildflowers which will

attain a height of 24 inches or more will not be permitted in narrow medians, or in sight triangles where they will interfere with adequate sight distances. General Conditions, '703.A.3 outlines other facts concerning wildflower plantings.

4. Transition mowing standards between urban and rural categories with a long, smooth, flowing line. This transition should occur over a distance of approximately 2,000 feet.

C. Rural

1. Interstate

a. Begin mowing operations, except wildflower areas once vegetation has reached approximately 12 inches in height. Maintain right-of-way using a 5-inch cutting height.

b. Mow all mowable areas, except wildflower areas a minimum of three times each year. Medians are to be mowed in their entirety each mowing cycle except where wildflowers, shrubs or trees are present. Weather permitting, these mowings should occur in May, August and in late October or November.

c. Wildflowers will be permitted as in '703.A.3 under Urban Systems. Maintain the to 18 inch maximum vegetation height up to the limits of the wildflower planting area. Wildflower areas are allowed to naturally reseed within 15 feet of travel lane.

d. Mow wildflower areas after they have gone to seed. For spring blooming varieties this should normally occur in May and fall blooming plants should be mowed in late October or November. The Roadside Development District Coordinator should be consulted to determine appropriate timing for mowing wildflower areas

e. Remove all dead ornamental plants as in '703.B, Urban Systems and replace during the proper planting season with appropriate type of plant.

f. Herbicide applications are to be made in accordance with General Conditions, '703.A.11 and 12.

g. Maintain frontage roads in the same manner as primary system.

h. Weight Enforcement Scale areas are to be mowed in their entirety each mowing cycle using a 5 inch mowing height. Rest areas are to be mowed in accordance with EDSM No. IV.3.1.2.

2. Primary Multi-Lane And Two Lane

a. Begin mowing operations once vegetation has reached approximately 12 inches in 0 height, unless herbicides have established desirable vegetation and rendered mowing unnecessary. Mowing heights are to be 5 inches.

b. Mow a 30 foot strip from the edge of the roadway surface to the top of the backslope to facilitate drainage, or to the right-of-way on multi-lane and two-lane

roadways. Medians less than 80 feet in width are to be mowed in their entirety each mowing cycle. In medians which have been allowed to revegetate naturally, mow a 30-foot strip from the edge of the roadway surface or to the back edge of the ditch. Mowing should be accomplished a minimum of three times per year.

c. Wildflowers will be permitted as in '703.A.3, Urban Systems.

d. Mow entire mowable area of the right-of-way annually in late October and November after the wildflowers have bloomed and the seed has set. In areas which have been allowed to revegetate naturally, annually mow a 40 foot strip to eliminate woody growth.

e. Mow interchange areas to same standards as roadways.

f. Herbicide applications are to be made in accordance with General Conditions, '703.A.11 and 12.

g. Maintain frontage roads in the same manner as

3. Secondary and Farm-to-Market System

a. Begin mowing operations once vegetation has reached a 12-inch height. Mowing heights are to be 4 - 6 inches.

b. Mow a 15-foot strip from the edges of the roadway surface or to the back side of the ditch to facilitate drainage.

c. Herbicide applications are to be made in accordance with General Conditions, '703.A and 11 and 12 or as determined by District personnel based on existing conditions.

d. Annually mow entire mowable area in the fall, normally in late October or November after wildflowers have bloomed and the seed has set to prevent excessive woody growth.

D. Intersections (All Systems)

1. Right-of-way permitting, mow to the sight distance transition limits specified herein.

2. Mow all flare areas at junctions for sight distance.

E. Mowing Exceptions

1. Areas where individuals or businesses mow right-of-way along their property.

2. Areas where appropriate herbicide treatment can keep vegetation within the standards.

3. Areas that are not applicable, i.e., wildflower areas.

4. Areas where seedlings are planted and/or permitted to grow.

5. Rest areas and tourist information centers, on the interstate system, are to be maintained by the caretakers in a lawn-type condition.

6. Unmowable areas within defined mowing limits.

F. General Vegetation Management Plan

**Graphics can be viewed in the Louisiana State Register  
on April 20, 2000.**

G. Typical Vegetation Management Section Rural,  
Interstate

**Graphics can be viewed in the Louisiana State Register  
on April 20, 2000.**

H. Typical Vegetation Management Section Rural,  
Primary Multi-Lane

**Graphics can be viewed in the Louisiana State Register  
on April 20, 2000.**

I. Typical Vegetation Management Section Rural,  
Primary Two Lane

**Graphics can be viewed in the Louisiana State Register  
on April 20, 2000.**

J. Typical Vegetation Management Section Rural,  
Secondary and Farm to Market

**Graphics can be viewed in the Louisiana State Register  
on April 20, 2000.**

## K. Sight Distances for Signs and Intersections

### Graphics can be viewed in the Louisiana State Register on April 20, 2000.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:820.6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 18:204 (February 1991), LR 26:

#### ' 705. Herbicides

A. Laws and Regulations. The Federal Insecticide and Rodenticide Act as amended in 1972 (FIFRA) requires individuals who apply restricted use pesticides to be certified applicators. National standards for the certification of applicators are found in Title 40, Part 171 of the Code of Federal Regulations. State standards for certification of applicators are found in the Louisiana Pesticide Law, Chapter 21 of Title 3 of the Louisiana Revised Statutes, Rules and Regulations promulgated under the authority of the Louisiana Pesticide Law have been published in the Louisiana Register further delineating the requirements for certification and recertification. The Louisiana Department of Agriculture has been designated by the U.S. Environmental Protection Agency as the agency responsible for the enforcement of FIFRA within the State of Louisiana. The Department is also responsible for the enforcement of the Louisiana Pesticide Law. The Louisiana Cooperative Extension Service, by cooperative agreement, is responsible for the training necessary to become a certified applicator.

##### B. General

1. Herbicides have played an important part in the management of the roadside right-of-way the past several years, particularly the selective spraying program. This program is used predominately to control Johnson grass and other weeds while favoring the growth of Bermuda grass which requires little mowing.

2. Herbicides have also been used successfully on hard surfaced shoulders, cracks in paved traffic islands and revetments under guardrails, at bridge ends, ditches and other areas which are impossible to mow. Since chemicals that are used as herbicides require that safety precautions are observed, the Roadside Development Coordinator in the District should be in complete charge of their use. The operators on the spray trucks are required to be licensed by the Department of Agriculture. The Roadside Development coordinator is familiar with brand names, different types of chemicals, calibration of the rig, pumps, etc., has been licensed and should be consulted in detail for chemical herbicide work.

3. In order to realize the maximum output from both mowing and spraying operations, it is important that the Parish Maintenance Superintendent and Roadside Development Coordinator manage these operations together. Correct timing will result in good results and a savings of funds. Two mowings per season and two sprayings per

season are generally enough for most roadsides if they are coordinated.

4. Department of Transportation and Development has been using herbicides for approximately 20 years. The main reason for using herbicides is because it is a safe economical means of controlling vegetation resulting in cost savings for the Department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:820.6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 18:204 (February 1991), amended LR 26:

#### ' 709. Factors of Herbicide Application

##### A. Herbicide Types

1. Soil-active (residual) herbicides are active in the soil and stop plant growth of germinated seeds and roots in the following manner. Soil-active herbicides are moved into the root zone by water. The herbicide is absorbed by the root system and translocated throughout the plant affecting plant growth processes. Visual effects should begin to appear in several days. The swiftness of the herbicide action is dependent on soil type, rainfall, plant species and rate of herbicide application. Soil-active herbicides can be applied to the soil in the winter prior to or shortly after the emergence of vegetation in spring. Vegetation must be present; never apply herbicide to already bare ground.

2. Contact herbicides halt visible plant growth at least for a short time in the following manner. Contact herbicides are absorbed by the foliage and transported throughout the plant, affecting plant growth processes. Several days are usually required for the effects to appear. Some of these herbicides may also have a short period of activity in the soil. Vegetative diversity may require a combination of chemicals to be used if broad-spectrum control is desired.

##### B. Desired Vegetation Control

1. Bare Ground or Complete Vegetation Control. Soil-active herbicide at the proper rate and time will normally provide complete vegetation control. Bare ground vegetation management may be desirable in areas where it can be economically maintained or where plant growth creates fire or other safety hazard or decreases maintenance efficiency. To maintain a bare ground condition after the first year application, spot-treatment may be necessary. Application of an excessive quantity of chemical is not economical and may result in damage to desirable vegetation. This type of treatment should only be used in storage yards.

2. Selective Weeding. Selective weeding is the use of a herbicide or a combination of herbicides for the control of selected species and does not permanently harm desired vegetation. Herbicides used for this type of control may be applied either as a pre-emergence (before plants emerge from seed) or a post-emergence (after plants emerge from seeds) application.

3. Chemical Mowing. This is the practice of using herbicide to control undesirable vegetation in close proximity to valuable plants. This procedure can be used to control vegetation under fences and guardrails, along drainage ditches and in landscaped areas when near desirable vegetation.

##### C. Type and Species of Plants to be Controlled

1. Proper selection of herbicides and their application rates are dependent on the type and species of vegetation to be controlled as well as the condition of the plant. Some

plant species are resistant to certain herbicides. The condition of a plant may be either active growth or dormancy. It may be a seedling or a mature plant or it may be budding, leafing, flowering or fruiting. All of these conditions should be considered when deciding where and when to use or not to use herbicides. For example, the best condition to apply a contact herbicide to many plants is when they are about to produce a seed head or fruit (e.g., the **Abboot** stage of Johnson grass). In general, seedling plants are easier to control than older more established plants. Plants are categorized as either annual, biennial or perennial.

2. Annual and Biennial Plants. These plants originate from seed. Annuals complete their life cycle in one year (seed to seed); biennials require two years to complete their life cycle. A contact treatment is generally sufficient in controlling seedlings. Annual weeds around signs and other appurtenances can be controlled with contact treatment or in combination with a pre-emergence herbicide.

3. Perennial Plants. These plants have an extensive root system and live from year to year. Perennials also produce seeds to ensure survival of their species. Specific herbicides, whether contact or soil active, are usually required for their control.

D. Soil Type. Depending on soil type, the proper application rate yields good vegetation control. Soil-active herbicides are more active in soils that are low in clay or organic matter because of the reduced absorbency of these soils. Therefore, the application rate may be reduced. In soils that are high in clay or organic matter, herbicide adheres to the soil particles and is not available to the roots of the plant. Consequently, the rate of herbicide application may need to be increased. The acidic/alkaline nature of the soil can also affect the performance of a herbicide. For example, in relatively acidic soils, OUST decomposes at a faster rate than it does in more alkaline soils. In loose or sandy soils a soil-active herbicide may move off target easily carried, by either water or wind.

E. Wind Velocity

1. Wind will disturb the spray pattern and blow the chemical away from the target area; high winds can blow it several feet away. The wider the pattern the greater the effects of wind distortion. It is best to spray before wind velocity rises. The proper drift control agent will help reduce drift. If wind velocity rises too high, and the pattern cannot be kept on target, then spraying should be discontinued.

2. For purposes of deciding whether to spray and for record-keeping, carry a wind gauge in the spray unit to determine wind speed. Highest winds permissible will be 10 miles per hour.

F. Humidity. Relative humidity is the percentage of moisture in the atmosphere relative to the maximum amount which the atmosphere could hold. Generally, the higher the humidity at the time of application, the more rapid the

K. Herbicide Rate Chart

Product			Rate	500 Gal.	
			1,000	Nov.	Jan
Name			March	May	Comments
			Tank	Gal.	&
		&		&	
Acres		Mix	Tank	Dec.	Feb.
			Oct.		April
		Mix			

uptake of contact applied herbicides. However, when humidity is at or approaching 100 percent, rainfall will most likely occur and the herbicide will be washed from the leaf surface. Consequently, herbicides should not be applied when rainfall is imminent. Conversely, if the humidity is approximately 60 percent or lower, the longer it may take the herbicide to become active.

G. Rainfall

1. Rainfall affects chemical control of vegetation. It is a vehicle for movement of soil-active herbicides into the root zone of plants. Soil-active chemicals must be in solution before they can enter the root system of plants. Excessive water may reach the soil-active herbicide below the root zone of the plant resulting in poor control. Moisture from rainfall, thawing cycles and snow on the ground may prevent the herbicide from entering the soil in sufficient quantities to achieve the desired degree of control. Moreover, excessive rainfall may lead to serious herbicide damage to areas outside of the target area.

2. Do not spray contact herbicides during rainfall or if rainfall is likely to occur within six hours after application. Rain will wash the herbicides off the leaves before it can be absorbed by the plant. After a rain, dust on the leaves will have been washed off and contact herbicides are more easily absorbed by the plant. Allow the foliage time to dry after a rain before spraying since wet foliage may yield poor results.

H. Temperature. Temperature affects the results of vegetation control with herbicides. Do not use herbicides when the soil is frozen, when rain or snow is falling, or when there is snow on the ground. High temperatures during the summer months may cause many plants to become semi-dormant. When this occurs the plants will not absorb the herbicide adequately.

I. Water Quality. Use good clean water to mix herbicides, as impurities in the water may deactivate the herbicide. Another reason for using clean water is that sand or clay particles may damage the pump, solenoids and nozzles of the spray rig.

J. Mixing, Timing and Application

1. Mixing and application are to be in conformance with the manufacturers' recommendations. All precautions issued by the manufacturer are to be taken into account and followed.

2. Timing for spraying of herbicides will be coordinated and determined by the roadside development district coordinator and the parish maintenance superintendent.

3. A spraying report is to be filled out by the herbicide applicator when applying herbicides to the roadsides.

4. Following is a chart of herbicides, application rates, times to spray and pertinent comments concerning their uses.

Oust	1 oz. 16 oz. 32 oz.	
	X	2
	oz. Oust to be used where Oust	
1 2 oz.	is	
	24 oz. 48 oz. X	
	required to be	
2 oz.	used in Nov. & Dec.,	
	32 oz. 64 oz. X	
	2 oz. to be used	
	in Jan. & Feb. in areas where	
	there is a heavy concentration	
	of Johnson grass, 1 2 oz. per	
	acre should be used. On	
	moderate stands of Johnson	
	grass, 1 oz. should be used	
	after Johnson grass has almost	
	been eliminated. Oust should	
	not be used where Bahia is	
	predominant.	
2-4-D	2 qt. 8 gal. 16 gal.	
	X X	
	Combination of 2-4-D and	
Roundup	Roundup	
	Pro 1 pt. 2 gal. 4 gal.	
	X	
	should be used only in	
	southern	
	part of state where 2-4-D is	
	not restricted and when	
	temperature reaches 75 degree	
	or above. Can be used around	
	signs and guardrails at rate	
	of 2 qt. 2-4-D and 1 qt.	
	Roundup per acre. DO NOT SPRAY	
	THIS RATE ON SLOPES.	
Garlon 3A	1 qt. 4 gal. 8 gal.	
	X X	Only to
Roundup Pro	be used in northern part of	
	1 pt. 2 gal. 4 gal.	
		state
		where 2-4-D is restricted and
		when temperature reaches 75
degree		
		or above. Can be used around
		guardrails and signs at the
rate of		
		1 qt. Garlon and 1 qt. Roundup.
M.S.M.A.	2 qt. 8 gal. 16 gal.	
	X X	Only to
2-4-D	be used in southern part of	
	2 qt. 8 gal. 16 gal.	
		state where 2-4-D is not
		restricted
where		and on very rare occasions
		Roundup will not do as good a
		job and where there is a very
thin		
		stand on Bermuda grass.
M.S.M.A.	2 qt. 8 gal. 16 gal.	
	X X	Only to
Garlon 3A	be used in southern part of	
	2 qt. 4 gal. 8 gal.	
		state where 2-4-D is not
		restricted
where		and on very rare occasions
		Roundup will not do as good a

thin				job and where there is a very stand on Bermuda grass.
Campaign				48 oz. 6 gal. 12 gal. X X Can be used in southern section of state in lieu of 2-4-D and
Roundup				mixture. When heavy concentration of vines and woody
plants				add 1 pint of 2-4-D.
Product				Rate 500 Gal. 1,000 Nov. Jan March May Comments
Name				Per Tank Gal. &
	Acre		& Mix	Tank Dec. Feb. April Oct.
		Mix		
Escort				2 oz. 8 oz. 16 oz. X X Can be used where 2-4-D is restricted.
Rodeo				1 pt. 2 gal. 4 gal. X X To be used on slopes and in
	1 qt.			4 gal. 8 gal. water where Bermuda grass should not be destroyed. To be used under bridges and in water for complete control of vegetation.
Roundup				2 qt. 8 gal. 16 gal. X X To be used on shoulders, around
Pro				guardrails and signs when temperature reaches 70 degree
or				above. Can be used close to
trees.				
Hyvar XL				10 gal. 120 gal 320 gal. X X Only to be used in storage yards and in places where complete soil sterilization is required. Can
not				be sprayed close to trees where there is danger of runoff.
Surfactant				8 oz. 1 gal. 2 gal. To be used in all tank mixes except OUST alone Hyvar XL or Roundup Pro.
Poly Vinyl				2 oz. 1 qt. 2 qt. To be used in all tank mixes where fixed booms are used.

Recommended Speed and Pressure on Cibolo Sprayers, Guide to Calibration	Pressure 28 lbs. 10 mph	Rate Tank Mix Gal. Per Acre 31.25	Acres 500 Gal. Tank Mix 16 Acres	Acres 1000 Gal. Tank Mix 32 Acres
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L. Daily Herbicide Spraying Report

**Graphics can be viewed in the Louisiana State Register on April 20, 2000.**

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:820.6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 18:204 (February 1991), amended LR 26:

**' 711. Wildflowers**

**A. General**

1. Louisiana and the Department of Transportation and Development are embarking on a statewide plan for the planting and preservation of wildflowers along its rights-of-way. The Department of Transportation and Development and Louisiana Project Wildflower are working very closely evaluating equipment, planting methods and herbicide operations to produce maximum stands of wildflowers.

2. It shall be the policy of the Department to encourage the growth, planting and preservation of wildflowers in order to provide a natural setting for the traveling public. Mowing and spraying operations shall be coordinated and timed to enhance the wildflower population and provide a naturally appealing roadside appearance.

**B. Establishment of Wildflower Areas**

1. One of the best methods of establishing wildflower areas is by observing and documenting native stands in order that they may be preserved for future generations. To this end, a form has been developed in order for the traveling public to report and document any sightings of wildflowers along the states rights-of-way. These forms will be available in all District offices of the Department of Transportation and Development and Louisiana Project Wildflower will distribute these forms at all of their meetings.

2. Another method would be to stockpile topsoil which has wildflower seed present and transport this soil to desired locations. This method allows some seed to remain in place and allows the establishment of new stands in other locations.

3. Other means of collecting wildflower seed is by cutting the wildflowers with a sickle mower and gathering the cut flowers laden with seed. These cuttings can then be transported to another location and spread, thus establishing a new stand of wildflowers.

4. The method which is being practiced more frequently is by direct planting. Wildflower seeds are being commercially grown and although expensive, they are producing desired results with less effort than other means.

5. Commercial seed suppliers are able to supply individuals with a mix of several species of seeds or in lots of individual species of seed. Once a selection of types of seed has been determined, it is necessary to establish a planting rate based on the amount of Pure Live Seed (PLS). PLS is the amount of purity multiplied by the percent of germination. The PLS in a lot of seed can be obtained from the supplier. In

wildflower planting a rate of 36 to 45 seeds per square yard is normally adequate. Areas that are to be experienced by pedestrians should be planted at a rate possibly 1.5 greater than this. These rates are broad guidelines and should be adjusted to obtain the desired effect. A partial listing of commercial wildflower seed sources is contained herein for informational purposes.

6. Planting times will vary according to the conditions the seeds are being planted. Generally wildflower seeds are planted between late fall and spring, although some can be planted during the summer providing supplemental irrigations is available.

7. There is a certain amount of risk associated with planting the seed in late fall. Rain and warm temperatures could cause the seed to germinate prematurely and be killed by a freeze.

8. Site selection is one of the most important factors in establishing new stands of wildflowers. Be sure to establish the site conditions required to grow certain species. Some may require full sun, others partial shade, still others may require constantly moist soil and others well drained soil. Sites that are relatively weed free with existing stands of shorter grass works best. On sloping sites consideration should be given to seeding grass along with the wildflowers. In some cases, it may be necessary to use a fiber mat to hold the soil and seed in place until germination.

9. Wildflowers have a wide tolerance of soils and PH (Acid/Alkaline) conditions. Wildflowers do best in soils of low fertility. High nitrogen soils only encourage the growth of weeds thus causing competition for growth and slowing of the wildflowers. If a site is void of nutrients, it may be wise to consider the use of a low nitrogen fertilizer such as 5-10-10.

10. Soil preparation is not absolutely necessary since most wildflower seeds can be broadcast over undisturbed ground. If this method is followed, you can expect some delay in germination and some of the seed can be displaced by the elements or eaten by birds and rodents. The key element in planting wildflower seeds is to have good soil to seed contact.

11. One method of insuring soil, seed contact is by mowing the area to be planted as close as possible and remove grass clippings and weeds by raking the entire area. Then lightly till the site with a flail motor, roto tiller, harrow, discs or a weighted section of chain link fence pulled behind a tractor. It is important not to till the ground too deep since this will encourage the growth of any weed seed which may be present in the topsoil. A maximum depth of one-half inch is sufficient. In areas which have a strong weed population, it is necessary to treat the unwanted vegetation with a herbicide and removing the dead plants prior to disturbing the ground surface.

12. The size of the area to be seeded will determine the type of equipment best suited. On small areas hand sowing or a small mechanical device should be sufficient. In large areas mechanical seeders properly calibrated should produce desired results more efficiently and effectively. When planting fine seed, it may be necessary to mix an inert carrier with the seed to obtain better distribution. Recommended inert carriers are sand or vermiculite. The recommended ratio for these carriers is 2:1 sand to seed.

13. Once the seed has been planted, it must be covered to maximum depth of 1/8 to 1/4 of an inch. This can be accomplished by lightly raking the seed in with a hand rake for small areas, or by using a drag mat behind a tractor for larger areas. If a drill seeder is used, firm the soil after drilling with a cultipacker to insure proper seed/soil contact.

14. Wildflower seeds need moisture for germination and growth. Supplemental watering may be necessary if there is not adequate rainfall. As the planting becomes established, watering may be reduced. While it is important for the wildflowers to

receive water it is equally important to provide adequate drainage for certain species. Germination will vary from species to species and from seed to seed within the same species. Time periods for germination will also vary from as little as several days to as slow as several years.

15. Once the wildflowers have finished blooming and set seed, the entire area should be mowed. Mowing the area will help to scatter the seed for the following years= growth. Wildflower areas should be mowed to a height of 4 - 6 inches and should be accomplished in October and November. Waiting longer than this to mow generally results in very wet conditions which could cause more harm than good when attempting to mow.

16. If a strong weed or invasive grass population has established itself in the wildflower areas, it may be necessary to treat with a contact herbicide or translocated herbicide to kill the root system in order to give an advantage to the following years stand of wildflowers.

**Graphics can be viewed in the Louisiana State Register on April 20, 2000.**

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:820.6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 18:204 (February 1991), LR 26:

**§713. Landscaping**

**A. General**

1. Highway landscape design should begin with an analysis and the inventory of the landscape features in order to identify, evaluate and locate the features to be conserved, further developed and/or incorporated in the highway corridor.

2. Careful and proper landscaping of the right-of-way should result in the conservation, enhancement and effective display of the urban and rural countryside through which the highway passes. A properly landscaped highway will conserve the historical features and natural landscape assets while improving the aesthetic and functional quality of the highway.

3. There are two general classes of vegetation along highways: turf, such as grasses and legumes, and taller growing types consisting primarily of woody plants which are shrubs and trees. This section is devoted to the planning and design of the taller growing plants as seen against the foundation of turf. Woody plants create a three-dimensional effect in the landscape and require special design considerations. Natural growth that exists may provide part or all of the desired planting effects in rural areas. Where possible, the retention of desirable natural existing growth is extremely important and requires consideration early in design. Planting is important along highways on new location and many times it may be more important along reconstructed highways on existing location because of restricted right-of-way and adjacent development.

4. The motorist should be able to view complete vistas and changing scenes in scale with the travel speed. Widely spaced plantings of individual trees or shrubs create a spotty and disturbing effect. Massed plantings are the form and texture of the landscape viewed at highway speeds. Tree plantings should be set back from the traveled lanes, not only for safety but also to insure spatial continuity and the strong visual effect of a wide turf area between pavement and plantings. Generous sight distance must be maintained at all times. The plants used must be capable of growing relatively well with minimum maintenance to serve their purpose under the highway conditions they may encounter.

5. Design and choice of plant materials vary considerably from region to region. Rural locations may only require supplementing existing growth with small sized new plants and planting for special functions while the urban and suburban highway may require extensive plantings with larger sized plants.

6. Planting designs should be created in accordance with the requirements of the highway and serve a justifiable

purpose. They should be planned objectively on a broad scale before consideration is given to the actual selection of plants to be used. Their composition should be pleasing and coordinated with the total highway environment with safety being the most important consideration.

7. Planting plans should be clear, concise, easily understood and presented on drawings separate from the highway construction plans. The plans should indicate type of adjacent land use, topographic features, such as slope limits and utility installations in addition to the location of plants and their area of occupancy at maturity. A plant list should also be included in the plans. This will provide information concerning the species, size, condition, fertilizing requirements and other pertinent general notes which may apply. The latest and best planting techniques should be used along with top quality plants. Specifications for nursery stock, planting and other types of landscape construction should be clear, concise and describe the quality of work desired.

**B. Functions of Highway Planting Design**

1. In design form follows function. Some functions of highway planting design are as follows:

**a. Planting for Highway Safety**

i. Screening Headlight Glare. Plantings can be very effective in screening headlight glare from oncoming vehicles. Blinding vision due to headlight glare can be a cause of accidents. In addition to curved median areas, headlight glare can also be a problem between interchange loops and from frontage roads, service roads and parking areas. Shrub plantings may help prevent head-on collisions in these conditions.

ii. Delineation. Plants may be used to delineate changes in highway alignment. Headlight glare reduction plantings may serve a dual purpose in this regard. Shrubs or trees on the outside of curves may aid in directing a motorist, particularly in fog or rain storms and during night driving. Plants may also be used to aid a motorist in seeing directional signs by framing or forming a background.

iii. Psychological Design Considerations. Existing and new plantings may help to alleviate driver fatigue brought about by long stretches of riding surface that call for no change of eye focus which may even lull the driver to sleep. Emphasis may be given to directional changes by delineation plantings which aid in a driver's decision by making it easier to discern the outline of a curved roadway. These plantings may be in the median or on the outside of curves. This may be of particular importance at night when the plants are illuminated by headlights. Plantings placed beyond the junction of a  $\Delta$  intersection may aid in informing a motorist of a change in direction. High headed trees may be placed within an interchange to make it conspicuous in the landscape for approaching roadways. The steepness of a cut slope may be accentuated by using vertical plant forms, or minimized by using horizontal plant forms and patterns.

iv. No vegetation shall be planted that will hide or obscure visibility of any official highway sign.

**b. Planting for Environmental Mitigation**

i. Traffic Noise. Traffic noise is a serious environmental problem to people living adjacent to major highways carrying large volumes of traffic. Plants absorb and scatter sound waves to a small degree. The effectiveness

of plants as noise barriers is very limited because of the considerable width, height and density required. The principle noise reduction effect of plantings is psychological. When it is possible or feasible to use barriers or other actual means of attenuation, plantings may reduce human annoyance and awareness of the problem by screening the noise source from view. Evergreens are best suited for this purpose; however, they may be used in combination with dense deciduous plants. Planting should be an integral part of noise barrier design due to their length and height. Plants can visually soften their effect and reduce the perceived massiveness of the barriers. In addition to trees and shrubs, vines are very effective for this purpose.

ii. **Wildlife Habitat.** Roadside plantings can provide food in the form of berries, browse and forage. Nesting cover is also provided for birds and other mammals. Preservation of existing trees and shrubs is important and the regeneration of native growth can be hastened by the establishment of mowing limits.

iii. **Revegetation.** Where climatic and soil conditions permit, all exposed soil surfaces should be revegetated. This may be in the form of turf, herbaceous or woody vegetation. Through the establishment of mowing limits, regeneration of native growth from adjacent seed sources will be encouraged and a natural blending with surrounding areas will occur. This form of naturalization may be hastened and supplemented by the planting of young trees and shrubs and proper maintenance activities. When reconstruction of a highway occurs, tree and shrub restoration should be included in the landscape plans to serve plant functions wherever this is feasible. This is important where existing roadside buffers must be destroyed for roadway construction.

c. **Planting for Aesthetics**

i. **Visual Quality.** Planting is one of the several methods used to improve visual quality in transportation facilities. Through the application of landscape design principles, the functional and aesthetic can blend to produce safe and pleasant highways. The highway should reflect the character of attractive communities. Trees and shrubs can provide a green buffer between the traveled way and adjacent development. Plants of larger size may be necessary in urban areas to give an immediate effect. The selection of suitable species is important in urban areas and should be based on experience in similar areas. Street tree plantings can significantly improve the visual quality of communities. Flowering trees and shrubs and wildflowers enhance the highway environment and offer pleasant and changing scenes for the motorist and adjacent property owners.

ii. **Screening Undesirable Views and Objects.** Screening undesirable views seen from and toward the highway can be performed with plants, earth berms, fences and combinations thereof. Space permitting, plantings offer a variety of forms and combinations which can be arranged to obtain the desired results. Although effective screening with plants may take several years to achieve, this should not deter or discourage the use of this method. Sight lines from and toward the highway, of the object to be screened, should be studied and a determination of the type of screening to be used should be made. Where a year-round effect is desired, evergreen plants should dominate and deciduous should be added for seasonal and textural interest. Whenever possible,

consideration should be given to the removal of the objectionable object.

d. **Setback Distances for Trees**

i. These guidelines may be applied to new plantings of trees whose trunk diameter at maturity will be 4 inches or greater. Setback distances or vehicle recovery areas are related to type of slope, slope ratio, traffic volumes and design speed of the highway. The setback is from the traveled way, which is the portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes. Minimum horizontal and vertical clearance setbacks for all roads will be governed by the Louisiana Department of Transportation Design Standards.

ii. Given distances will not always be practical. Variations in site-specific conditions need to be considered and may warrant special treatment. Existing historic, aesthetic or environmentally important trees may be retained within the recovery area if they are protected or are not in a target position, such as the outside of horizontal curves. Shrubs and ground cover may be planted within the recovery area for safety and aesthetic purposes.

iii. The above guidelines should be used unless one of the following reasons will allow for a lesser distance or require a greater distance: For central business districts and local streets with barrier curbs, a minimum distance of 1.5 feet should be provided beyond the face of the curb to the anticipated outside diameter of the tree trunk when mature. On urban arterials and collectors with similar curbs and usually higher speeds, the offset distances should be increased.

iv. Where limited right-of-way or the necessity for planting would result in less clearance, all factors in the area should be weighted to decide if a special exception is warranted. Special exceptions or conditions may include:

aa. Where exceptional or unique trees because of size, species or historic value exist.

bb. On designated scenic roads or low-speed roads, as well as low-speed urban roads.

cc. Where the absence or removal of trees would adversely affect rare/endangered/threatened species (plant or animal), wetlands, water quality or result in serious erosion/sedimentation effects.

dd. Locations where the cumulative loss of trees would result in a significant adverse change in character of the roadside landscape.

ee. Landscape, park, recreation, horticultural, residential or similar areas where trees and other forms of vegetation provide significant functional and/or aesthetic value.

v. Trees should not be placed or remain where they are particularly vulnerable to vehicle contact or where significant incidences of run-off road accidents occur.

C. **Criteria for Landscaping Interstate and Major Primary Routes**

1. The clear distance from the edge of the traveled way to the face of the tree line shall be a minimum of 50 feet on the mainline and 30 feet for ramps. The setback is measured from the traveled way, which is the portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes. These distances apply to trees with trunk diameter of four inches or greater at maturity.

2. Trees may be planted or remain within the 50 foot clear distance or the 30 foot clear ramp area when they are protected by guardrail on nontraversable backslopes or other protected areas. Setback distances behind guardrails are as follows:

a. The minimum distance behind guardrail depends on the deflection of the guardrail as described in the AASHTO reference cited. Examples of this setback distance are 11 feet for cable guardrail, 3 feet for W-Beam guardrail and no distance for concrete barriers.

b. Although there is no minimum distance behind rigid barriers, consideration should be given to tree branching and maintenance in determining setbacks.

3. The clear distance from the edge of the travel lane to the shrubbery line shall be determined by Sheet 1 of 4 of the Design Standards.

4. Exit gore areas shall be free for a distance of 350 feet of trees and shrubbery which will attain a height greater than 2.5 feet. Shrubby which will not attain a height of 2.5 feet will be permitted in the gore area. In rural areas, exit gores shall be free of trees for a distance of 600 feet along the mainline and 500 feet along the ramp.

5. Entrance ramps shall require a minimum of 350 feet along the ramp (sight triangle to the main roadway) free of trees and shrubbery. In the case of loop ramps, a point 350 feet from the gore area, intersecting the main travel lane and extended to the nose of the off ramp preceding the loop or 600 feet (whichever is longer) shall be clear of trees and shrubbery, with the exception of shrubs which will not attain a height greater than 2.5 feet. In the case of large rural diamond interchanges, there will be no planting over 2.5 feet in height along a line of sight from a point 500 feet from the gore area intersecting the mainline and a point 600 feet along the mainline from the gore area.

6. The clear distance from the edge of ramps to the shrubbery line shall be a minimum distance of 15 feet.

7. The clear distance from the edge of entrance and exit ramps to the tree line shall be a minimum of 50 feet. No trees will be permitted within 50 feet of the inside and outside edge of a loop ramp. Shrubby may be planted in front of any group of trees planted outside the 50 foot line. Shrubby planted within the 30 foot line on the inside of loop ramps shall not attain a height greater than 2.5 feet in order to provide adequate stopping sight distance around the loop.

8. Ramp terminals at the cross roads shall have an unobstructed view of the crossroad for a minimum of 150 feet in all directions. The view back beyond the structure from the exit ramp intersection with the cross road shall be kept unobstructed within the limits set by the columns or embankment.

9. No trees shall be planted within utility rights-of-way or in areas which may interfere with power lines once the trees mature.

10. Refer to the figures below for graphic illustrations of these criteria.

11. Design Guidelines may be loosened so as to permit maintenance - intensive designs which might not otherwise be permitted on the state highway system. Examples might include fountains, statuary and/or planting schemes which require a high level of consistent maintenance in order to assure success.

#### D. Criteria for Landscaping Arterial Roads, Collector Roads, Local Roads and Streets

1. The normal set-back distance for trees (See Design Standards for Urban UA-1, UA-2) whose trunk diameter at maturity will exceed four inches shall not be closer than 40 feet from the travel edge of the roadway except under special conditions:

a. On the high or cut side of the roadway not in the likely path of an uncontrolled vehicle.

b. On the low or fill side if protected by a guardrail or not likely to be hazardous to an out-of-control vehicle.

c. If important historically or aesthetically and, protected by a guardrail.

d. On routes in cities and towns with speed limits 35 MPH or less, a minimum of 10 feet behind a barrier curb to the face of the tree. Trees of this size will only be allowed in medians which are 30 feet or greater in width and protected by a barrier curb.

2. Small trees, with trunks normally less than 4 inches, such as crape myrtle, wax myrtle, etc., will be allowed in medians, on routes with speed limits up to 45 MPH, under the following conditions:

a. Minimum setback determined by design standards behind a barrier curb. Not more than 4 feet of the tree spread will be allowed to overhang the roadway.

b. A minimum setback of 30 feet beyond the edge of the travel way, for uncurbed roadways and medians, providing they do not interfere with the drainage pattern.

3. The clear distance from the right edge of the travel way to the shrubbery line shall be a minimum of 25 feet. When protected by a barrier curb, the minimum will be determined by Design Standards.

4. On curves, adequate sight distance for the design speed of the highway must be maintained, in accordance with Design Standards.

5. For safety reasons, control of landscaping at intersections is critical. Sight triangles at intersections are determined by the design speeds of the intersecting roadways. Any object within the sight triangle high enough above the elevation of the adjacent roadways to constitute a sight obstruction will not be allowed. No trees shall be planted in sight triangles. Shrubby and ground cover will be allowed in the sight triangle providing their height does not exceed 2.5 feet above the roadway surface. Minimum sight distance requirements for intersections are illustrated in *Sight Distance Requirements at Typical Intersection*.

6. Refer to the figures below for illustrations of these criteria.

7. Design Guidelines may be loosened so as to permit maintenance-intensive designs which might not otherwise be permitted on system. Examples might include fountains, statuary, art and/or planting schemes which would require a high level of consistent maintenance in order to assure success.

8. A plant list outlining various species that have been used for highway planting is included in this manual (See '713.E). This should not be the only plant material considered for highway landscaping.

9. The Landscape Unit of DOTD will provide technical assistance, standard plans and suggestions for construction methods along highway rights-of-way to local governing bodies. The local governing body should address

the request to the Secretary of the Department of Transportation and Development in order to obtain assistance. Upon completion of the planning and design phase of a project, the governing body which requested the project will obtain a permit from the Department's Permit Unit. This permit will stipulate that the governing body will construct and maintain the project at no cost to the Department of Transportation and Development.

E. Planting List

1. The following is a listing of plants which have been used on landscaping projects with success. This list is only intended as a guide and is not considered to be all inclusive.

a. Shrubs and Ground Covers (30" maximum height)

- i. Liriope (Liriope Muscari or Liriope Spicata)
- ii. Monkey Grass (Ophiopogon Japonicum)
- iii. Asian Jasmine (Trachelosperum Asiaticum)
- iv. Daylily (Hemerocallis Spp.)
- v. Indian Hawthorne **AClara** (Raphiolepis Indica)
- vi. **ABlue Rug** Juniper (Juniperus Horizontalis

**AWiltonii**)

vii. **ABlue Pacific** Juniper (Juniperus Conferta **ABlue Pacific**)

viii. Parson's Juniper (Juniperus Parsoni)

b. Small Shrubs (4' maximum height)

- i. Dwarf Yaupon (Ilex Vomitoria Nana)
- ii. Dwarf Chinese Holly (Ilex Cornuta Rotunda)
- iii. Indian Hawthorne **APeggy** and **AClara** (Raphiolepis Indica)
- iv. Compacta Juniper (Juniperus Chinensis Pfitzeriana Compacta)
- v. Dwarf Oleander **APetite Pink** or **APetite Salmon** (Nerium Oleander)\*

vi. Fountain Grass (Pennisetum Setaceum)

vii. Maiden Grass (Miscanthus Sinensis)

\*These plants should be used in only the southern most areas of the state due to their susceptibility to freezing.

c. Large Shrubs

- i. Pampas Grass (Cortaderia Argentea)
- ii. Eleagnus (Eleagnus Angustifolia)
- iii. \*Pittosporum (Pittosporum Tobira)
- iv. \*Oleander (Nerium Oleander)
- v. Spiraea (Spiraea Reevesiana)
- vi. \*Primrose Jasmine (Jasminum Primulinum)
- vii. Ligustrum (Ligustrum Japonica)
- viii. \*VIBURNUM (Viburnum Odoratissimum)
- ix. Photinia (Photinia Fraseri)
- x. Pineapple Guava (Feijoa Sellowiana)
- xi. \*Sago Palm (Cycas Revoluta)

\*These plants should be used only in the southern half of the state due to their susceptibility to freezing.

a. Small Trees (25' maximum height.)

i. Crape Myrtle (Lagerstroemia Indica or Lagerstroemia Indica x Fauriel)

ii. Wax Myrtle (Myrica Cerifera)

iii. Leggy Yaupon (Ilex Vomitoria)

iv. Tree Hollies (MANY VARIETIES) (Ilex)

v. Leggy Ligustrum (Ligustrum Japonica)

vi. Leggy Photinia (Photinia Fraseri)

vii. Leggy Pineapple Guava (Feijoa Sellowiana)

viii. \*Leggy Viburnum (Viburnum Odoratissimum)

ix. \*\*Crab Apple (Malus Spp.)

x. \*Vitex (Vitex Agnus Castus)

xi. Japanese Magnolia (Magnolia Soulangeana)

xii. Purple Plum (Prunus Cerasifera)

xiii. \*Windmill Palm (Trachycarpus Fortunei)

xiv. \*Palms (Many Varieties)

\*These plants should be used only in the southern portions of the state due to their susceptibility to freezing.

\*\*These plants should be used only in the northern portions of the state.

e. Medium Trees

i. Drake's Elm (Ulmus Parvifolia Sempervirens **ADrake**)

ii. Pistachio (Pistachia Chinensis)

iii. Bradford Pear (Pyrus Calleryana **ABradford**)

iv. \*Golden Rain Tree (Koelreuteria Bipinnata)

v. \*Cabbage Palm (Sabal Palmetto)

vi. \*Palms (Many Varieties)

\* These plants should be used only in the southern portions of the state due to their susceptibility to freezing.

f. Large Trees

i. Live Oak (Quercus Virginiana)

ii. Sawtooth Oak (Quercus Acutissima)

iii. Water Oak (Quercus Nigra)

iv. Shumard Oak (Quercus Shumardii)

v. Red Maple (Acer Rubrum Drummondii)

vi. Silver Maple (Acer Saccharinum)

vii. Tulip Poplar (Liriodendron Tulipifera)

viii. American Elm (Ulmus American)

ix. Cedar Elm (Ulmus Crassifolia)

x. Winged Elm (Ulmus Alata)

xi. Sweet Gum (Liquidambar Styraciflua)

xii. Cypress (Taxodium Distichum)

xiii. Southern Magnolia (Magnolia Grandiflora)

xiv. Weeping Willow (Salix Babylonica)

xv. Pines (MOST VARIETIES) (Pinus)

F. Typical Urban Cloverleaf

**Graphics can be viewed in the Louisiana State Register on April 20, 2000.**

G. Typical Urban Diamond

**Graphics can be viewed in the Louisiana State Register on April 20, 2000.**

H. Typical Rural Interchange

**Graphics can be viewed in the Louisiana State Register on April 20, 2000.**

- I. Median Planting for Barrier Curbed Roadways
  - Minimum Setbacks for Highway Plantings without Barrier Curbs

**Graphics can be viewed in the Louisiana State Register on April 20, 2000.**



K. Sight Distance Requirements

**Graphics can be viewed in the Louisiana State Register on April 20, 2000.**

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:820.6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development LR 17:204 (February 1991), amended LR 26:

**§715. Guidelines for Vegetation Visibility Permits**

A. General. The Department of Transportation and Development recognizes that the presence of vegetation on highway rights-of-way has a positive value for Louisiana. Trees benefit the state by mitigating the impact of the highway system, increasing soil stabilization, providing wildlife habitat, and moderating microclimate extremes. The Department of Transportation and Development endorses the preservation of existing vegetation along transportation corridors. It may become necessary to remove vegetation when maintenance and safety concerns warrant such action. The Department of Transportation and Development may consider trimming and removal of vegetation that visually impacts legally permitted outdoor advertising displays and adjacent businesses. However, not every permit request will be granted. Factors such as adjacent land use, visual screening of & from the roadway, tree species types & conditions, and public opinion will be considered before a final determination is made. All permits granted for vegetation removal will require mitigation in the form of replacement plantings. Maintenance of these planting areas will become the responsibility of the permittee. Permits will only be issued between October 15 and April 15 to promote optimum survival of replacement vegetation.

B. Procedure. Requests for off-premise or on-premise advertising displays will be made using application for Project Permit Form Nos. DOTD 03-41-3035 or DOTD 03-41-0593, copies of which will be maintained in each district office. The application for a permit shall include the following:

1. State or Federal Highway Number
2. Location or distance from nearest state highway intersection to the proposed sign location.
3. Number, name of species, approximate diameter and height of existing trees which are projected for removal.
4. Where trees are in groups, the diameters and heights may be shown for each group as a whole; i.e., 10 oaks and pines 8" to 12" diameter, 30' to 50' high.
5. Approximate number and names of shrubs and vines or, if the number cannot be estimated, the distance and location along the highway from point-to-point must be shown.
6. Kind of work to be done - trimming, removal and replacement (replacement will be required in all instances where removal of vegetation is requested). No topping of trees will be allowed.
7. 8" x 10" color photographs taken from required locations (see Diagrams 1 & 2) clearly marked to show limits of work.
  - a. As part of his review, the traffic operations engineer will verify the location of the display and will forward the request to the Headquarters Permits Unit with information about the displays legal status. Legal status will

include available and pertinent information that should be considered, including but not limited to the following:

- i. Is this display under active citation?
- ii. Is this display subject to imminent removal?
- iii. Is this display illegally placed?
- iv. Is this display nonconforming to state beautification criteria?
  - b. Where replacement of trees is required, a plan (designed by a licensed Landscape Architect, at no cost to the Department) will be submitted to the Department for review, comments and/or approval.
  - c. Trimming and removal of trees must be performed by a bonafide bonded tree care service at no cost to the Department. A licensed landscape contractor shall perform replacement to trees at no cost to the Department. The permit shall contain a warranty clause wherein the permittee agrees to replace any trimmed or replacement tree or vegetation not living or seriously damaged one year after work is completed.
  - d. Visibility improvement will not be undertaken in any of the following instances:
    - i. The display has been in place less than five (5) calendar years.
    - ii. The display is illegally placed.
    - iii. The display is currently under contract with the state to be removed or it will be removed within one year.
    - iv. The display is on state property.
    - v. A right-of-way taking is imminent (within one year.)
    - vi. The trees or other vegetation to be trimmed, selectively removed, or removed and replaced are a distance greater than 500 feet, measured along the highway from the display.
  - e. Access to the work area shall be from private property or frontage road side and not from the main roadway or ramps. Where this is not practical the permittee shall conduct his operation in accordance with DOTD Maintenance Standards, including appropriate traffic control devices. The area shall be restored to original condition upon completion of the work.
    - f. Drainage shall not be impeded.
    - g. Work will be performed only during regular daylight hours, during which the Department of Transportation is open, Monday through Friday excluding legal holidays.
    - h. Vegetation which has been cut will not be left overnight within 30 feet of the travel lane or within highway right-of-way, whichever is less. No more vegetation will be cut down than can be cleaned up and removed by the end of work the following day. No debris will be left over a weekend or holiday. No burning will be permitted on the highway right-of-way. Stumps shall be cut or ground flush with the ground and treated with an EPA- approved herbicide immediately after the stump is cut.
      - i. Work shall not interfere with traffic on the roadway or shoulder at anytime. Parking of vehicles on roadway or shoulder shall not be permitted. All loading, hauling or other work associated with the permit will be conducted across adjacent property. Appropriate warning

signs shall be placed by the permittee in advance of the work area in accordance with the current edition of Part VI of the Manual on Uniform Traffic Control Devices (MUTCD) **B** Standards and Guides for Traffic Controls for Streets and Highway Construction, Maintenance, Utility and Incidental Maintenance Operations.

j. The vegetation control area will not extend more than 500 feet along the highway from the viewable face(s) of

the advertising device and cleared to and along the line of sight.

k. Where operations are conducted in an unsatisfactory manner or for any other cause, the Department may revoke the permit and any future permitting will be withheld until the unsatisfactory condition has been corrected.

C. Single Face Sign

**Graphics can be viewed in the Louisiana State Register on April 20, 2000.**

D. Double Face Sign

**Graphics can be viewed in the Louisiana State Register on April 20, 2000.**

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:820.6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 18:204 (February 1991), LR 26:

**§717. General policy governing the treatment of existing significant trees within the highway right-of-way, zone of construction or operational influence.**

A. Philosophy. The department's mission is to design and build highways and transportation facilities for the movement of people and goods, and also incorporate and accommodate cultural and community values. While emphasizing the importance of safe and efficient transportation systems, the value of transportation to a society is relative to all other things valued by a society. The same public that demands better and safer roads with increased capacity may also seek to prevent implementation of a demanded highway improvement, when such implementation necessitates the removal of a cherished tree or trees. The Department must find design solutions and operational options that give full consideration to these values, which are often in conflict with traditional transportation design objectives.

B. Legislation. Legal basis and mandate for the above philosophy exist at both the federal and the state level. The Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 and the National Highway System Designation (NHS) Act of 1995 both make strong commitments to preserving and protecting the environmental and cultural values affected by transportation facilities. In Louisiana, R.S. 48:267, R.S. 48:268, and R.S. 48:269 address the preservation and encouragement of trees, shrubbery, and vegetation, the tampering with trees and shrubs, and general authority for aesthetics in roadside development.

C. Definition. For the purposes of this policy, a tree is significant if it is 18 inches or greater in diameter, or is judged to be viable and aesthetically important by the Department's Landscape Architect, or if it is considered significant by one or more members of the local community. (R.S. 3:427 1 requires that any tree "ten inches in diameter breast height or greater" cut down on public land or rights-of-way be replaced by at least two trees, provided adequate space is available. This policy is intended to accord a higher degree of awareness to the disposition of trees with specific significance to the community).

D. Design Considerations. Trees are an important aspect of community identity. If communities consider existing trees a valuable resource, alternatives to complete eradication should be pursued. These alternatives may include installation of traffic barriers, lowering of the design speed, or even complete redesign of the facility to incorporate the trees. In most cases, a design solution can be found; but, the design team must recognize that individual situations will require individual solutions and individual approaches to design. The proximity of trees to the likely paths of errant drivers is a serious consideration to be made by designers knowledgeable in safety issues. However, a decision to create a clear zone that requires the removal of

existing trees is an issue that should be presented to the public and addressed by the multidisciplinary team very early in the design process. The Department's Landscape Architect and Environmental Engineer should be consulted when designs or operations pose potential conflict with significant trees. The fundamental principles to guide the designer, in order of preference, are:

1. All reasonable measures should be considered to avoid conflicts with trees of local value and significance. Such measures are not limited to choices in alignment or cross-section features. Selective routing of a storm sewer trunkline may avoid damaging or removing a significant tree, even if it requires additional right-of-way or servitude. Placement of a pipe or a utility may be accomplished by boring, as opposed to trenching, to avoid damage to root systems.

2. When complete avoidance is not possible, all reasonable measures should be taken to limit the magnitude and extent of the disturbance to the affected trees. The Department's Landscape Architect should be consulted in developing appropriate limitation measures.

3. Plans should include measures to mitigate any necessary impacts to existing significant trees. These may include compensation to the landowner, replacement of the tree, or enhancement at another valued location. Decisions regarding appropriate mitigation must be made in cooperation with the affected local community or landowner. The mitigation plan must meet the requirements of R.S. 3:4271, which requires the planting of at least two replacement trees for each tree greater than ten inches in diameter removed (provided that appropriate space is available). (References to guide in preliminary design concepts and in specific design solutions include: Flexibility in Highway Design, U.S. Department of Transportation, Federal Highway Administration Publication No. FHWA-PD-97-062, and A Guide for Transportation Landscape and Environmental Design, American Association of State Highway and Transportation Officials, Publication No. ISBN 1-56051-009-0.)

E. The decision to remove a significant tree should be reached only after all reasonable efforts to preserve it have been exhausted. The decision requires the concurrence of the Chief Engineer to confirm that there are no acceptable design or operational alternatives. In most cases, it is expected that a decision to remove will have been made in a climate of public involvement and dialog with members of the affected community. In no case will a decision to remove a significant tree be implemented without notifying the affected community of the Department's intentions and its reasons.

F. Trees determined by the design team to be significant and the appropriate disposition (preservation, specified limited impact, or any special treatment) will be identified in the plans. The Project Engineer will assure that the contractor's operations are sensitive to the treatment required by the plans. Construction considerations may include temporary fencing to protect from construction equipment, avoidance of root zones, care of overhanging branches, etc.

G. The same clear zone for which the project was designed and constructed should be maintained free of new growth. The decision to maintain or remove trees within the right-of-way of an existing system will be governed by the design standards applicable to the original design and construction. Installation of protective measures, such as barrier rail, may be considered. Trees should be trimmed to provide appropriate vertical clearance. The Department's Landscape Architect should be consulted prior to cutting or pruning of any significant trees. All maintenance operations should be conducted with the same care as exercised in construction to avoid damage to existing significant trees.

H. Where existing trees or vegetation obscure displays which were lawfully in place prior to the existence of the trees or vegetation, or where displays are erected by permit after existence of trees and/or other vegetation, removal and replacement will be considered as warranted by local conditions and in accordance with this rule.

I. It is the policy of the Department of Transportation and Development to retrofit new design standards to existing systems only as part of a general upgrade or reconstruction. Otherwise, the standards under which the system was originally built will continue to govern its operation and maintenance. Removal of significant trees from an existing system should not be undertaken simply to accommodate evolving standards, but will require the same degree of consideration and local involvement discussed herein.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:820.6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 18:204(February, 1991), LR 26:

All interested persons so desiring shall submit oral or written data, views, comments, or arguments no later than 30 days from the date of publication of this Notice of Intent to Sherryl J. Tucker, Senior Attorney, Department of Transportation and Development, P. O. Box 94245, Baton Rouge, LA 70804-9245, Telephone (225)237-1359.

### NOTICE OF INTENT

#### Department of Wildlife and Fisheries Wildlife and Fisheries Commission

#### Billfishes (LAC 76:VII.355)

The Wildlife and Fisheries Commission does hereby give notice of intent to promulgate a Rule, LAC 76:VII.355, increasing the minimum size limit for blue marlin from 96 inches to 99 inches lower jaw fork length. Authority for adoption of this Rule is included in R.S. 56:6(25)(a), R.S. 56:326.1 and R.S. 56:326.3. Said Rule is attached to and made a part of this Notice of Intent.

#### Title 76

#### WILDLIFE AND FISHERIES

#### Part VII. Fish and Other Aquatic Life

#### Chapter 3. Saltwater Sport and Commercial Fishery

#### §355. Harvest Regulations—Billfishes

\* \* \*

Species	Minimum Size Limit
1. Blue Marlin	99 inches Lower Jaw Fork Length (LJFL)

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(25)(a), R.S. 56:326.1 and R.S. 56:326.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 25:542 (March 1999.), LR 26:

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the Commission to promulgate and effectuate this notice of intent and the final rule, including but not limited to, the filing of the fiscal and economic impact statements, the filing of the notice of intent and final rule and the preparation of reports and correspondence to other agencies of government.

Interested persons may submit comments relative to the proposed Rule to: Randy Pausina, Marine Fisheries Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000, prior to Wednesday, June 7, 2000.

In accordance with Act#1183 of 1999, the Department of Wildlife and Fisheries/Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent: This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972(B).

Thomas M. Gattle, Jr.  
Chairman

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: Billfishes

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There will be no state or local government implementation costs. Enforcement of the proposed rule will be carried out using existing staff and funding levels.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenues to state or local governmental units from the proposed rule.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The rule is intended to provide consistent regulations for recreational harvest of blue marlin in state waters and in adjacent Federal waters. Blue marlin has been designated by the National Marine Fisheries Service (NMFS) as overfished under the provisions of the Magnuson-Stevens Act. The minimum size limit of blue marlin is currently 99 inches lower jaw fork length in Federal waters.

Recreational fishers who harvest blue marlin in state waters will be directly impacted, since they will only be allowed to keep blue marlin 99 inches lower jaw fork length instead of 96 inches. However, this impact is anticipated to be negligible. Harvesters may redirect their fishing efforts to other species, practice catch and release, or participate in non-fishing activities. Long-term benefits may accrue to harvesters in both the recreational and commercial sectors and the general public as a result of possible increases in the stocks protected by the proposed rule modification. No additional costs, permits, fees, workload or paperwork will occur from the proposed rule change.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be little or no effect on competition or employment in the public or private sector.

Thomas M. Gattle, Jr.  
Chairman  
0004#045

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Wildlife and Fisheries Wildlife and Fisheries Commission

#### Prohibited Fish Species (LAC 76:VII.359)

The Wildlife and Fisheries Commission does hereby give notice of intent to promulgate a Rule, LAC 76:VII.359, authorizing the possession of prohibited fish species. Authority for adoption of this Rule is included in R.S. 56:319.1. Said Rule is attached to and made a part of this Notice of Intent.

#### Title 76

#### WILDLIFE AND FISHERIES

#### Part VII. Fish and Other Aquatic Life

#### Chapter 3. Saltwater Sport and Commercial Fishery §359. Prohibited Fish Species, Permit for Scientific or Educational Purposes

The Secretary of the Department may issue permits to any person to possess, sell, or transport any fish into Louisiana for scientific or educational purposes, including species whose possession, sale, or transport is otherwise prohibited by commission rule. A copy of Federal Exempted Fish Permit must be submitted with the Prohibited Fish Species (PFS) application. The Department PFS Permit must be on display with the permitted fish at all times. This permit is non-transferable. The permit does not exempt holder from any Federal regulations and may be revoked at any time if abused.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:319.1.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 26:

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the Commission to promulgate and effectuate this notice of intent and the final rule, including but not limited to, the filing of the fiscal and economic impact statements, the filing of the notice of intent and final rule and the preparation of reports and correspondence to other agencies of government.

Interested persons may submit comments relative to the proposed Rule to: Mr. Randy Pausina, Marine Fisheries Division, Department of Wildlife and Fisheries, Box 98000,

Baton Rouge, LA 70898-9000, prior to Wednesday, June 7, 2000.

In accordance with Act# 1183 of 1999, the Department of Wildlife and Fisheries/Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent: This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972(B).

Thomas M. Gattle, Jr.  
Chairman

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Prohibited Fish Species

### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Implementation of the proposed rule will be carried out using existing staff and funding levels. Costs for permit development and issuance will be negligible, since less than ten permits are expected to be issued annually. Attaining and maintaining an adequate compliance level with this new regulation, may lower compliance levels of other regulations due to dilution of enforcement efforts. Local governmental units will not be impacted.

### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

To the extent that enforcement efforts are diverted to this new activity, some civil and/or criminal violators may not be apprehended. Any civil fines not collected will reduce department revenue, and any criminal fines not collected will reduce local revenue. Any reduction in revenues which might occur are anticipated to be negligible.

### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule will only affect persons or non-governmental groups attempting to possess prohibited species in Louisiana for scientific or educational purposes. The affected individuals or groups will be required to fill out a Prohibited Fish Species Application Form and attach a copy of the Federal Exempted Fish Permit. Economic benefits to directly affected persons or nongovernmental groups will depend upon the purpose of possession or use of such species. No additional costs will be incurred from the proposed rule.

### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be little or no effect on competition or employment in the public or private sector.

Thomas M. Gattle, Jr.  
Chairman  
0004#046

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office