

Rules

RULE

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 adopts 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 adopting 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

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

Agent Can authorized representative of the Department of Agriculture and Forestry.

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

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

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

Licensed Pet Turtle Farmer Can 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 Can solution of chlorine at a concentration approved by the Department of Agriculture and Forestry.

Department Cthe Department of Agriculture and Forestry.

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

Dip Solution Can approved antibiotic solution as defined above.

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

Egg Immersion Method Can 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 Can machine intended for the washing of turtle eggs, or modified from a machine intended for the washing of eggs of commercial poultry.

Exporter Can 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 Can 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 Can 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 Can certified laboratory as defined in R.S. 3:2358.3 and which employs at least one microbiologist.

Pet Turtle Can 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 Cany area of land or water used to breed, raise or keep pet turtles.

Quarantined Area Cany 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 Cany 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 Cany 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 26:1567 (August 2000).

§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 26:1568 (August 2000).

§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 26:1568 (August 2000).

§2305. Collection of Egg and Turtle Samples

A. 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:

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

b. 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 26:1569 (August 2000).

§2307. Movement of Pet Turtle Eggs and Pet Turtles

A. 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 26:1569 (August 2000).

§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 26:1669 (August 2000).

§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 26:1569 (August 2000).

§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 26:1570 (August 2000).

§2315. Quarantine

A. 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 26:1570 (August 2000).

§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 26:1570 (August 2000).

§2319. Pet Turtle Farmers; Licensing

A. 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 26:1571 (August 2000).

§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 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 26:1571 (August 2000).

§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 26:1571 (August 2000).

§2325. Department-issued Guidelines

A. 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 26:1571 (August 2000).

§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 26:1572 (August 2000).

§2329. Repeal of Prior Rules and Regulations

A. 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 26:1572 (August 2000).

Bob Odom
Commissioner

0008#030

RULE

Department of Economic Development Division of Small and Emerging Business Development

Small and Emerging Business Development Program
(LAC 19:I.Chapters 1-13)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, hereby adopts the following amendments to its rules relative to the Small and Emerging Business Development Program.

Title 19

CORPORATIONS AND BUSINESS

Part II. Small and Emerging Business Development Program

Chapter 1. General Provisions

§107. Eligibility Requirements for Certification

A. - D.1. ...

2. verification of signatories on business bank accounts;

D.3. - 6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1751, 1752, and 1754.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 23:50 (January 1997), amended LR 24:430 (March 1998), LR 25:1084 (June 1999), LR 26:1572 (August 2000).

§115. Duration of Certification

A. - B. ...

C. When the applicant firm's score on financial measurements per their SIC code published by the *Robert Morris Associates* for liquidity, leverage, operating efficiency, and profitability equals to or better than the national average, the firm will be graduated from the program if the firm's participation in the program has been less than seven years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1755.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 23:52 (January 1997), amended LR 26:1572 (August 2000).

§117. Reports by Certified Small and Emerging Businesses

A. - B. ...

C. Notification of Changes. To continue participation, a certified firm shall provide the division with a written statement of any changes in an address, telephone number, ownership, control, financial status, or major changes in the nature of the operation. Failure to do so may be grounds for termination of eligibility.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1757.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 23:52 (January 1997), amended LR 26:1572 (August 2000).

Chapter 3. Developmental Assistance Program

§301. Developmental Assistance

A. - B. ...

1. ...

2. Determination of Assistance. In consultation with the business owner, the division's staff will determine areas in which the business owner needs assistance.

3. Referral to Additional Resources. The division will assist the firm in obtaining intensive technical and/or managerial assistance from other resources, such as Small Business Development Centers, Procurement Centers, consultants, business networks, professional business associations, educational institutions, and other public agencies.

4. - 5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 23:53 (January 1997), amended LR 26:1573 (August 2000).

Chapter 5. Mentor/Protégé Program

§501. General Policy

A. The policy of the state is to implement a Mentor/Protégé program that breaks down barriers and builds capacity of small and emerging businesses, through internal and external practices which include:

1. Tone Setting. Intense and deliberate reinforcement by the governor's office of the state's provision for substantial inclusion of small and emerging businesses in all aspects of purchasing, procurement and contracting.

2. Accountability. Responsibility of each cabinet member and policy administrator to produce self-imposed and specific outcomes within a specified period of time.

3. Partnering. Teaming of Small and Emerging Businesses with businesses who have the capability of providing managerial and technical skills, transfer of competence, competitive position and shared opportunity toward the creation of a mutually beneficial relationship with advantages which accrue to all parties.

4. Capacity Building. Enhancing the capability of small and emerging businesses to compete for public and private sector contracting and purchasing opportunities.

5. Flexibility. Promoting relationships based on need, relative strengths, capability and agreement of the parties within the boundaries of the program objectives of inclusion, impartiality and mutual understanding.

6. Education. Sharing instruction on intent, purpose, scope and procedures of the Mentor/Protégé program with both government personnel at all levels of administration as well as the business community and the general citizenry.

7. Monitoring. Requiring the routine measurement and reporting of important indicators of (or related to) outcome oriented results which stems from the continuing quest for accountability of Louisiana state government.

8. Reporting. Informing the governor's office of self-imposed outcomes via written and quarterly reports as to the progress of intra-departmental efforts by having the secretary of the department and her/his subordinates assist in the accomplishment of the initiative keep records, and coordinate and link with representatives of the Department of Economic Development.

9. Continuous Improvement. Approach to improving the performance of the Mentor/Protégé operation which promotes frequent, regular and possible small incremental improvement steps on an ongoing basis.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 23:50 (January 1997), amended LR 26:1573 (August 2000).

§503. Incentives for Mentor Participation

A. Businesses participating as mentors in the Mentor/Protégé Program will be motivated for program participation via program features incorporated in the bid process as well as contracts and or purchase agreements negotiated with the firm. The following features may be instituted by the state of Louisiana to motivate Mentor participation.

1. Preferential Contract Award. The state of Louisiana may institute a system for awarding points to mentor participants which will confer advantages in the bid or selection process for contracting. The evaluation points granted a Mentor/Protégé Program participant will be proportionate to the amount of protégé participation in the project. Evaluation points will be weighted with the same standards as points awarded for quality for product or service; or

2. Performance Incentives. Contracts for goods or services may include a factor for evaluation of performance for the purpose of providing incentives for work performed or deliveries completed ahead of schedule. The incentive for contractors and suppliers who are Mentor/Protégé Program participants shall be not less than 5 percent greater than incentives awarded to firms who are not program participants.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 26:1573 (August 2000).

§505. Incentives for Protégé Participation

A. Businesses participating as proteges will be eligible for the following program benefits.

1. Subcontracting Opportunities. Protégé firms may be eligible for non-competitive subcontracting opportunities with the state and private sector industries.

2. Technical and Developmental Assistance. Protégé firms will be provided technical and developmental assistance provided by Mentors which is expected to build the capacity of the protégé firm to compete successfully for public and private sector opportunities.

3. Networking. The Department of Economic Development will institute a system of networking protégé firms with potential mentors for the purposes of facilitating successful Mentor/Protégé partnerships. SEB firms participating in the program will be included in the

Department of Economic Development's protégé source guide, which lists the firm and its capabilities as a sources of information for mentors in the program. Additionally, networking seminars for the purposes of introducing potential mentors and protégés will be held annually.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 26:1574 (August 2000).

§507. Guidelines for Participation

A. The Mentor/Protégé Program will be open to participation by any business entity which meets the criteria for participation as outlined below.

1. Mentor Firms:

- a. must be capable of contracting with the state;
- b. must demonstrate their capability to provide managerial or technical skills transfer or capacity building; and
- c. must remain in the program for the period of the developmental assistance as defined in the Mentor/Protégé plan.

2. Protégé Firms:

- a. must be a certified Small and Emerging Business with the state of Louisiana Department of Economic Development;
- b. must be eligible for receipt of government and private contracts;
- c. must graduate from the program within a period not to exceed seven years or until the firm reaches the threshold of \$750,000 net worth as defined by the SEB certification guidelines.

3. Mentor/Protege Plan

a. A Mentor/Protege Plan signed by the respective firms shall be submitted to the Department of Economic Development, Division of Small and Emerging Business Development for approval. The plan shall contain a description of the developmental assistance that is mutually agreed upon and in the best developmental interest of the protégé firm.

b. The Mentor/Protege plan shall also include information on the mentor's ability to provide developmental assistance, schedule for providing such assistance, and criteria for evaluating the protégé's developmental success. The plan shall include termination provisions complying with notice and due process rights of both parties and a statement agreeing to submit periodic report reviews and cooperate in any studies or surveys as may be required by the department in order to determine the extent of compliance with the terms of the agreement.

c. The submitted Mentor/Protege Agreement shall be reviewed by an Economic Development Small Business Advisor. The Small Business Advisor may recommend to the executive director of the Division of Small and Emerging Business Development acceptance of the submitted Agreement if the agreement is in compliance with the division's Mentor/Protégé guidelines.

4. Protégé Selection. Selection of the protégé is the responsibility and at the discretion of the mentor. Protégés may be selected from the listing of SEB's provided by the Department of Economic Development, Division of Small and Emerging businesses. A protégé selected from another source or reference must be referred to the Department of

Economic Development for certification as an SEB. The protégé must meet the department's guidelines for SEB certification as a condition of the Mentor/Protégé Plan acceptance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 26:1574 (August 2000).

§509. Measurement of Program Success

A. The overall success of the Mentor/Protégé program will be measured by the extent to which it results in:

1. an increase in the protégé firm's technical and business capability, industrial competitiveness, client base expansion and improved financial stability;
2. an increase in the number and value of contracts, subcontracts and supplier agreements by small and emerging businesses; and
3. the overall enhancement and development of protégé firms as a competitive contractor, subcontractor, or supplier to local, state, federal agencies or commercial markets.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.1

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 26:1574 (August 2000).

§511. Internal Controls

A. The Division of Small and Emerging Business Development will manage the program and establish internal controls to achieve the stated program objectives. Controls will include:

1. reviewing and evaluating Mentor/Protégé agreements for goals and objective;
2. reviewing semi-annual progress reports submitted by mentors and protégés on protégé development to measure protégé progress against the approved agreement;
3. requesting and reviewing periodic reports and any studies or surveys as may be required by the division to determine program effectiveness and impact on the growth, stability and competitive position of Small and Emerging Businesses in the state of Louisiana; and
4. continuous improvement of the program via ongoing and systematic research and development of program features, guidelines and operations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51: 1753.1

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 26:1574 (August 2000).

§513. Non-Performance

A. The Mentor/Protégé Agreement is considered a binding agreement between the parties and the state. Mentors who compete for contract award or purchasing activity and receive evaluation points as program participants are bound, in accordance with the terms of the state contract or purchase order, to fulfill the responsibilities outlined in the approved Mentor/Protégé Agreement as a condition of successful contracting or purchase activity. Protégé who are selected for program participation are bound, in accordance with the terms of their agreement with the Department of Economic Development for continued participation in the program. Failure of the parties to meet

the terms of the agreement are considered a violation of contract with liabilities as outlined below.

B. Failure of the mentor to meet the terms of the Mentor/Protégé Agreement will be considered a default of state contract or purchasing agreement and.

C. Failure of the protégé to meet the terms of the Mentor/Protégé Agreement will result in exclusion from future participation in the program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 26:1574 (August 2000).

§515. Conflict Resolution

A. The state will institute a system for independent arbitration for the resolution of conflicts between mentors and protégé as program participants and/or between program participants and the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 26:1575 (August 2000).

Chapter 9. Small Business Bonding Program

§901. Small Business Bonding Assistance

A.1. - 2. ...

3. Attendance. Attendance is open to only certified or potentially certified small and emerging business construction contractors. However, contractors must register for the institute he or she wishes to attend. Each contractor who successfully completes the LCAI will be issued a certificate of accreditation.

4. - 5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 23:53 (January 1997), amended LR 24:430 (March 1998), LR 26:1575 (August 2000).

Henry J. Stamper
Executive Director

0008#042

RULE

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, the Board of Elementary and Secondary Education adopted 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

A.1. - J.2. ...

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 26:1575 (August 2000).

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.

Weegie Peabody
Executive Director

0008#028

RULE

Board of Elementary and Secondary Education

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

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the State Board of Elementary and Secondary Education adopted an amendment to Bulletin 1566, Guidelines for Pupil Progression, referenced in LAC 28:I.907.A. The revision gives eighth grade students the ability to earn a maximum of one Carnegie unit of credit toward graduation for remedial courses. Prior to this

revision, these eighth 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 1566C 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 2C 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.

A.1.b.viii. - D.1. ...

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 26:1576 (August 2000).

Weegie Peabody
Executive Director

0008#029

RULE

Board of Elementary and Secondary Education

Bulletin 1706C 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, the Board of Elementary and Secondary Education adopted 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 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 1706C 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 uncoded

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 3 through 21 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 3 through 21 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 26:1576 (August 2000).

§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 26:1576 (August 2000).

§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 26:1576 (August 2000).

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 26:1576 (August 2000).

§1205. Preparation of Annual Budget

A. 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 26:1577 (August 2000).

§1220. Personnel Standards

A. 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 (3 through age 21).

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:1577 (August 2000).

§1230. Review of Enforcement Recommendations

A. 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 26:1577 (August 2000).

§1240. Impartial Hearing Officers

A. 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 26:1577 (August 2000).

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

A. 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 26:1577 (August 2000).

§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 26:1577 (August 2000).

§1261. Program Options

A. 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 26:1577 (August 2000).

§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 26:1577 (August 2000).

§1271. Nondiscrimination

A. 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 26:00015780 (August 2000).

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 26:1578 (August 2000).

§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.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:1578 (August 2000).

§1330. State Policies and Procedures: Notice and Participation

A. 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 26:1578 (August 2000).

§1355. Confidentiality of Records

A. The Division shall comply with all of the requirements of §1517 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 26:1578 (August 2000).

§1356. Notification of Child Identification Effort

A. 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 26:1578 (August 2000).

§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 26:1578 (August 2000).

§1370. Comprehensive System of Personnel

Development

A. 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 §1371 and §1372 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 26:1579 (August 2000).

§1371. Adequate Supply of Qualified Personnel

A. 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 26:1579 (August 2000).

§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 26:1579 (August 2000).

§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 26:1579 (August 2000).

§1374. Nonbias of Testing and Evaluation Materials

A. The Division shall, with the approval of the SBESE, establish procedures as found in §1434 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 26:1580 (August 2000).

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, 3 through 21 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, 3 through 21 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*); 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 §1440-1445.

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 §1440 and §1443 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 the age 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 26:1580 (August 2000).

§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 26:1580 (August 2000).

§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 26:1580 (August 2000).

§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 §1411, §1413-1414, and §1430-1436 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 §1517 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 26:1581 (August 2000).

§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 26:1581 (August 2000).

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

A. 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 26:1581 (August 2000).

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

A. 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 26:1581 (August 2000).

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

A. 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 26:1581 (August 2000).

§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*.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:1581 (August 2000).

§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 26:1582 (August 2000).

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

4. 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 26:1582 (August 2000).

§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 26:1582 (August 2000).

§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 26:1583 (August 2000).

§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 26:1583 (August 2000).

§1436. Timelines

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 26:1583 (August 2000).

§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 26:1583 (August 2000).

§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.

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 10 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 26:1583 (August 2000).

§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 26:1584 (August 2000).

§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.

1. Another method for parental participation is used and documented; or

2. 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 26:1584 (August 2000).

§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 26:1584 (August 2000).

§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 26:1585 (August 2000).

§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 26:1585 (August 2000).

§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 26:1585 (August 2000).

§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 26:1586 (August 2000).

§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;

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 26:1586 (August 2000).

§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 26:1586 (August 2000).

§1465. Facility Comparability

A. 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 26:1586 (August 2000).

§1470. Local Advisory Panel

A. 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 26:1586 (August 2000).

§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 26:1586 (August 2000).

§1482. Personnel Standards

A. 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 26:1587 (August 2000).

§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 §1482 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 26:1587 (August 2000).

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

A. 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 26:1587 (August 2000).

§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 26:1587 (August 2000).

Chapter 15. Procedural Safeguards

§1501. General Responsibility

A. 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 26:1587 (August 2000).

§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 26:1587 (August 2000).

§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 26:1587 (August 2000).

§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 26:1588 (August 2000).

§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 26:1588 (August 2000).

§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 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 future 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 §1504.A.1. At a minimum, mediation shall be offered whenever a due process hearing is requested under §1507 and §1519.I and, §1519.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 26:1589 (August 2000).

§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 26:1590 (August 2000).

§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 26:1591 (August 2000).

§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 15 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 26:1591 (August 2000).

§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 26:1591 (August 2000).

§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 26:1591 (August 2000).

§1512. Appeal to State or Federal Court

A. 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 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 26:1591 (August 2000).

§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 26:1591 (August 2000).

§1515. Costs

A. 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 26:1591 (August 2000).

§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 26:1592 (August 2000).

§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; an

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 complaint. Such a complaint shall be investigated by the Division according to adopted procedures for complaint 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 18.

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 26:1592 (August 2000).

§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 26:1593 (August 2000).

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 §1430-1436 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 26:1593 (August 2000).

§1693. Procedural Safeguards

A. 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 26:1594 (August 2000).

§1695. Monitoring and Compliant Management

A. 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 26:1594 (August 2000).

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:1594 (August 2000).

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 §1401.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 26:1594 (August 2000).

§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.

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

A. 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 26:1594 (August 2000).

§1712. Individual Evaluation

A. 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 26:1594 (August 2000).

§1713. IEP/Placement

A. IEP/Placement of students enrolled in a State Board Special School shall be reviewed or revised and implemented in accordance with §1440-1459 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 26:1594 (August 2000).

§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 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 26:1594 (August 2000).

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 26:1595 (August 2000).

§1810. Relationship Between LEAs and the Department

A. 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 26:1595 (August 2000).

§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 26:1595 (August 2000).

§1830. Types of Interagency Agreements

A. 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 26:1595 (August 2000).

§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 26:1595 (August 2000).

§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 26:1596 (August 2000).

Chapter 19. Definitions

§1901. Terms

A. 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 26:1596 (August 2000).

§1902. Abbreviations/Acronyms Used in These

Regulations

- A. DSSCState Division of Social Services
- B. DHHCState Department of Health and Hospitals
- C. DPS&CCState Department of Public Safety and Corrections
- D. FAPECFree Appropriate Public Education
- E. FERPAFamily Educational Records and Privacy Act of 1974
- F. G/TCGifted and/or Talented
- G. IDEACPart 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. IEPCThe Individualized Education Program required by §1440 of these Regulations
- I. LEACLocal Education Agency
- J. LRECLeast Restrictive Environment
- K. SBESECState Board of Elementary and Secondary Education

L. Section 504CSection 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#2CSpecial 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 26:1596 (August 2000).

§1903. Abbreviated Terms

A. The ActCSections 1941 through 1958 of Chapter 8 of Title 17 of Louisiana Statutes of 1950, as amended

B. The DepartmentCThe State Department of Education

C. The DivisionCThe Division of Special Populations of the Louisiana Department of Education

D. The StateCThe State of Louisiana

E. The State BoardCThe State Board of Elementary and Secondary Education

F. The State Board Special SchoolsCThe 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 26:1596 (August 2000).

§1904. Definitions

*Age of Majority*Cas defined in Louisiana means eighteen years of age.

*At No Cost*Call 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*CMonday through Friday, except Federal and State holidays (unless holidays are specifically included in the designation of business day).

*Child Search Coordinator*Cthe 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*Cis 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*Cinvolves the storage, disclosure to third parties, retention and destruction of personally identifiable information.

*Consent*Cmeans 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—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—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.

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 and are not a school of a LEA, 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 60 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 26:1599 (August 2000).

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 26:1599 (August 2000).

Weegie Peabody
Executive Director

0008#031

RULE

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, the Board of Elementary and Secondary Education adopted an amendment to LAC 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. EvidenceCOrder 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: (August 2000).

Weegie Peabody
Executive Director

0008#027

RULE

**Student Financial Assistance Commission
Office of Student Financial Assistance**

Tuition Opportunity Program for Students
(TOPS)CDefinitions (LAC 28:IV.301)

The Louisiana Student Financial Assistance Commission (LASFAC) hereby amends rules of the Tuition Opportunity Program for Students (TOPS) (R.S. 17:3042.1 and R.S. 17:3048.1).

**Title 28
EDUCATION**

**Part IV. Student Financial AssistanceCHigher
Education Scholarship and Grant Programs
Chapter 3. Definitions
§301. Definitions**

* * *

*Award Amount*Can amount equal to Tuition at the school attended, for those students attending a Louisiana public college or university, as determined by the commission, which may be used by the student to pay any educational expense included in that student's cost of attendance. For purposes of a TOPS award for a student enrolled in a Louisiana professional school shall be equal to the tuition charged for a student while pursuing a baccalaureate degree at the highest cost public school or the Weighted Average Award Amount, depending upon whether the Louisiana professional school is a public or private school.

* * *

*Tuition*Cthe fee charged each student by a postsecondary institution to cover the student's share of the cost of instruction, including all other mandatory enrollment fees charged to all students, except for the Technology Fee authorized by Act 1450 of the 1997 Regular Session of the Legislature, which were in effect as of January 1, 1998, and any changes in the cost of instruction authorized by the legislature and implemented by the institution after that date. Tuition for purposes of a TOPS award for a student enrolled in Louisiana professional school shall be equal to the tuition charged for a student while pursuing a baccalaureate degree at the highest cost public school or the Weighted Average Award Amount, depending upon whether the Louisiana professional school is a public or private school.

*Undergraduate Student*Ca student who has not completed the requirements for a baccalaureate degree program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 24:2237 (December 1998), LR 25:256 (February 1999), LR 25:654 (April 1999), LR 25:1458, 1460 (August 1999), LR 25:1794 (October 1999), LR 26:65 (January 2000), LR 26:1601 (August 2000).

Mark S. Riley
Assistant Executive Director

0008#005

RULE

**Student Financial Assistance Commission
Office of Student Financial Assistance**

Tuition Opportunity Program for Students
(TOPS)C Establishing Eligibility
(LAC 28:IV.703 and 803)

The Louisiana Student Financial Assistance Commission (LASFAC) hereby amends rules of the Tuition Opportunity Program for Students (TOPS)(R.S. 17:3042.1 and R.S. 17:3048.1).

**Title 28
EDUCATION**

**Part IV. Student Financial AssistanceC Higher
Education Scholarship and Grant Programs**

**Chapter 7. Tuition Opportunity Program for
Students (TOPS) Opportunity;
Performance and Honors Awards**

§703. Establishing Eligibility

A. - A.5.a. ...

i. at the time of high school graduation, an applicant must have successfully completed 16.5 units of high school course work constituting a core curriculum as follows:

| Units | Course |
|-------|--|
| 1 | English I |
| 1 | English II |
| 1 | English III |
| 1 | English IV |
| 1 | Algebra I (one unit) or Applied Algebra IA and 1B (two units) |
| 1 | Algebra II |
| 1 | Geometry, Trigonometry, Calculus or comparable Advanced Mathematics |
| 1 | Biology |
| 1 | Chemistry |
| 1 | Earth Science, Environmental Science, Physical Science, Biology II, Chemistry II, Physics, Physics II, or Physics for Technology |
| 1 | American History |
| 1 | World History, Western Civilization or World Geography |
| 1 | Civics and Free Enterprise (one unit combined) or Civics (one unit, nonpublic) |

| | |
|---|---|
| 1 | Fine Arts Survey; (or substitute two units performance courses in music, dance, or theater; or two units of studio art or visual art; or one elective from among the other subjects listed in this core curriculum) |
| 2 | In a single Foreign Language (one unit or credit for three or more hours of college foreign language for students graduating from high school during the 1996-97 and 1997-98 school years) |
| 2 | Computer Science, Computer Literacy or Business Computer Applications (or substitute at least one-half unit of an elective course related to computers that is approved by the State Board of Elementary and Secondary Education; or substitute at least one-half unit of an elective from among the other subjects listed in this core curriculum) |

A.5.a.ii. - G.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 25:2237 (December 1998), LR 25:257 (February 1999), LR 25:655 (April 1999), LR 25:1794 (October 1999), LR 26:64 (January 2000), LR 26:1602 (August 2000).

Chapter 8. TOPS-TECH Award

§803. Establishing Eligibility

A. - A.6. ...

a. Core CurriculumCTOPS-TECH Award

| Units | Course |
|-------|---|
| 1 | English I |
| 1 | English II |
| 1 | English III |
| 1 | English IV or Business English |
| 1 | Algebra I (one unit) or Applied Algebra IA and 1B (two units) |
| 1 | Algebra II |
| 1 | Geometry or Applied Geometry, Trigonometry, Calculus or comparable Advanced Mathematics |
| 1 | Biology |
| 1 | Chemistry or Applied Physics |
| 1 | Earth Science, Environmental Science, Physical Science, Biology II, Chemistry II, Physics, Physics II or Physics for Technology |
| 1 | American History |
| 1 | World History, Western Civilization or World Geography |
| 1 | Civics and Free Enterprise (one unit combined) or Civics (one unit, non-public) |
| 1 | Fine Arts Survey or any approved vocational course in the areas of Agriscience, Business Education, Family and Consumer Science, Health Occupations, Marketing Education, Technology Education, or Trade and Industrial Education; (or substitute two units of performance courses in music, dance or theater; or two units of studio art or two units of visual art courses; or one elective from among the other subjects listed in this core curriculum) |
| 2 | In a single Foreign Language (one unit for students graduating from high school during the 1996-97 and 1997-98 school years.) or Technical Writing, Speech I or Speech II (two units) |
| 2 | Computer Science, Computer Literacy or Business Computer Applications (or substitute at least one-half unit of an elective course related to computers that is approved by the State Board of Elementary and Secondary Education; or substitute at least one-half unit of an elective from among the other subjects listed in this core curriculum) |

b. - 11. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 24:1898 (October 1998), amended LR 24:2237 (December 1998), LR 25:1795 (October 1999), LR 26:64 (January 2000), LR 26:1602 (August 2000).

Mark S. Riley
Assistant Executive Director

0008#006

RULE

Student Financial Assistance Commission Office of Student Financial Assistance

Tuition Opportunity Program for Students
(TOPS)C Obligation, Deferment and Cancellation
(LAC 28:IV.911 and 2105)

The Louisiana Student Financial Assistance Commission (LASFAC) hereby amends rules of the Tuition Opportunity Program for Students (TOPS) (R.S. 17:3042.1 and R.S. 17:3048.1).

Title 28 EDUCATION

Part IV. Student Financial AssistanceC Higher Education Scholarship and Grant Programs

Chapter 9. TOPS Teacher Award

§911. Discharge of Obligation

A. - B.2. ...

3. the first two full semesters of full-time teaching will be applied toward the earliest dated disbursement not previously paid under §911.C, the second two full semesters the next earliest dated disbursement, and continuing until all disbursements have been fulfilled;

C. - C.3.a. ...

b. the date the recipient notifies LASFAC that monetary repayment is desired; or

C.3.c. - D.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:638 (April 1998), amended LR 24:1907 (October 1998), amended LR 26:69 (January 2000), amended LR 26:00160300 (August 2000).

§2105. Repayment Obligation, Deferment and Cancellation

A. - B.4. ...

5. recipient is engaging in a full-time course of study at an institution of higher education at the baccalaureate level or higher; or

6. - C.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:649 (April 1998), amended LR 24:1918 (October 1998), amended LR 26:1603 (August 2000).

Mark S. Riley
Assistant Executive Director

0008#004

RULE

Department of Environmental Quality Office of Environmental Assessment Environmental Planning Division

Beneficial Environmental Projects (BEPs)
(LAC 33:I.2501-2505)(OS037)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has adopted the Office of the Secretary regulations, LAC 33:I.Chapter 25 (Log #OS037).

This 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 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 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 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

A. 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 26:1603 (August 2000).

§2503. Definitions

*Beneficial Environmental Project (BEP)*Ca 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 Cthat 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 Cthe 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 26:1603 (August 2000).

§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 26:1604 (August 2000).

James H. Brent, Ph.D.
Assistant Secretary

0008#039

RULE

**Department of Environmental Quality
Office of Environmental Assessment
Environmental Planning Division**

**Emissions Control from Motor Vehicles and Related Fees
(LAC 33:III.223; 1901-1935)(AQ200)**

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions

of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Air Quality regulations at LAC 33:III.223 and repealed LAC 33:III.1901-1935 and Chapter 19.Appendix (Log #AQ200).

The existing regulations at LAC 33:III.1901-1935 and the appendix at the end of Chapter 19 are being repealed, and the fees at LAC 33:III.223 are being amended, because the enhanced Motor Vehicle Inspection/Maintenance (I/M) Program was never implemented and was not reauthorized by the Louisiana Legislature in 1997. Although these regulations were promulgated in 1995, vehicle testing was not to begin until 1999, and only after reauthorization by the Legislature in 1997. As the Legislature did not reauthorize this enhanced program, the program was never implemented, and thus, these regulations are moot and obsolete and need to be repealed. The Legislature, by Act 576 of the 1999 Regular Session, did authorize a low enhanced, less stringent, less costly program for the control and abatement of motor vehicle emissions to include new evaporative system pressure tests. A gas cap pressure test was implemented effective January 1, 2000, and a fuel inlet pressure test is scheduled to be implemented later in the year. The new emissions testing will be performed as part of annual vehicle safety inspections, and thus, enforcement of program provisions and collection of fees for this new low enhanced vehicle inspection/maintenance (I/M) program will be governed by the Department of Public Safety and Corrections, Office of State Police, Safety Enforcement Section (DPS), with DEQ providing oversight, data collection support, and liaison activities. In accordance with R.S. 32:1306(C), DPS has promulgated a final Rule on December 20, 1999, necessary to implement the new requirements of this recently authorized low enhanced vehicle emissions I/M program. The basis and rationale for this rule are to repeal the regulations for control of emissions from motor vehicles that are now moot and obsolete.

This 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 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 2. Rules and Regulations for the Fee System of the Air Quality Control Programs

§223. Fee Schedule Listing

| Fee Schedule Listing | | | | | | |
|---------------------------------------|------------------------|------|------------------------|------------------------|----------------------|-------|
| Fee Number | Air Contaminant Source | SICC | Annual Maintenance Fee | New Permit Application | Modified Permit Fees | |
| | | | | | Major | Minor |
| *** | | | | | | |
| [See Prior Text in Fee No. 0010-1720] | | | | | | |

| Additional Fees | | |
|--|---|--------|
| Fee Number | Fee Description | Amount |
| *** [See Prior Text in Fee No. 2000-2300] | | |
| 2400 | An application approval fee for Stage II Vapor Recovery | 100.00 |
| | An annual facility inspection fee for Stage II Vapor Recovery | 150.00 |
| 2600 *NOTE 16* | Accident Prevention Program Annual Maintenance Fee: Program 1 | 200.00 |
| *** [See Prior Text in Fee No. 2620-2914] | | |

Explanatory Notes for Fee Schedule

[See Prior Text in Notes 1-17]

Note 18. Reserved.

[See Prior Text in Note 19 - Processing Timelines Table]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054, 30:2341 and 30:2351 et seq.

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 14:613 (September 1988), LR 15:735 (September 1989), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1205 (December, 1991), repromulgated LR 18:31 (January 1992), amended LR 18:706 (July 1992), LR 18:1256 (November 1992), LR 19:1373 (October 1993), LR 19:1420 (November 1993), LR 19:1564 (December 1993), LR 20:421 (April 1994), LR 20:1263 (November 1994), LR 21:22 (January 1995), LR 21:782 (August 1995), LR 21:942 (September 1995), repromulgated LR 21:1080 (October 1995), amended LR 21:1236 (November 1995), LR 23:1496 (November 1997), LR 23:1499 (November 1997), LR 23:1662 (December 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:267 (February 2000), LR 26:485 (March 2000), LR 26:1606 (August 2000).

Chapter 19. Repealed

Subchapter A. Repealed

§1901. Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:1224 (November 1995), repealed by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1606 (August 2000).

§1903. Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:1224 (November 1995), repealed by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1606 (August 2000).

§1905. Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:1224 (November 1995), repealed by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1606 (August 2000).

§1907. Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:1225 (November 1995), repealed by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1606 (August 2000).

§1909. Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:1226 (November 1995), repealed by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1606 (August 2000).

§1911. Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:1227 (November 1995), repealed by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1606 (August 2000).

§1913. Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:1228 (November 1995), repealed by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1606 (August 2000).

§1915. Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:1228 (November 1995), repealed by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1606 (August 2000).

§1917. Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:1228 (November 1995), repealed by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1606 (August 2000).

§1919. Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:1229 (November 1995), repealed by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1606 (August 2000).

§1921. Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:1229 (November 1995), repealed by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1607 (August 2000).

§1923. Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:1231 (November 1995), repealed by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1607 (August 2000).

§1925. Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:1232 (November 1995), repealed by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1607 (August 2000).

§1927. Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:1232 (November 1995), repealed by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1607 (August 2000).

§1929. Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:1233 (November 1995), repealed by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1607 (August 2000).

§1931. Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:1233 (November 1995), repealed by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1607 (August 2000).

§1933. Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:1234 (November 1995), repealed by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1607 (August 2000).

§1935. Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:1234 (November 1995),

repealed by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1607 (August 2000).

Appendix . Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:1234 (November 1995), repealed by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1607 (August 2000).

James H. Brent, Ph.D.
Assistant Secretary

0008#040

RULE

**Department of Environmental Quality
Office of Environmental Assessment
Environmental Planning Division**

Incorporation by Reference Update C40 CFR Part 60
(LAC 33:III.3003)(AQ102)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Air Quality regulations, LAC 33:III.3003 (Log #AQ206*).

This rule is identical to federal regulations found in 40 CFR Part 60, July 1, 1999, 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 rule; therefore, the rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

This rule incorporates by reference 40 CFR Part 60 as revised July 1, 1999, into LAC 33:III.Chapter 30. Louisiana receives delegation authority from the U.S. Environmental Protection Agency (EPA) for 40 CFR Part 60 Standards of Performance for New Stationary Sources (NSPS) by incorporating the federal regulations into the LAC. EPA's 105 Grant Objective requires that incorporation by reference of new and revised NSPS regulations be made annually. This rulemaking meets that requirement. The basis and rationale for this rule are to mirror the federal regulations.

This 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 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 30. Standards of Performance for New Stationary Sources (NSPS)

Subchapter A. Incorporation by Reference (IBR)

§3003. IBR 40 Code of Federal Regulations (CFR) Part 60

A. Except as modified in this Section, regulations at 40 CFR part 60 as revised July 1, 1999, and specified below in

Tables 1 and 1.A are hereby incorporated by reference as they apply to the state of Louisiana.

| Table 1. 40 CFR Part 60 | |
|------------------------------|--|
| 40 CFR Part 60 Subpart | Subpart Heading |
| [See Prior Text in A - Ea] | |
| Eb | Standards of Performance for Large Municipal Waste Combustors for which Construction is Commenced after September 20, 1994, or for Which Modification or Reconstruction Is Commenced After June 19, 1996 |
| [See Prior Text in Ec - WWW] | |

[See Prior Text in Table 1.A]

B. Reserved

[See Prior Text in C - D]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 22:1212 (December 1996), amended LR 23:1681 (December 1997), LR 24:1287 (July 1998), LR 24:2238 (December 1998), LR 25:1239 (July 1999), LR 25:1797 (October 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1607 (August 2000).

James H. Brent, Ph.D.
Assistant Secretary

0008#021

RULE

**Department of Environmental Quality
Office of Environmental Assessment
Environmental Planning Division**

**Land Disposal of Prohibited Waste by Deep Well Injection
(LAC 33:V.517, 1529, 2201-2269, 2273, 4357 and 5120)
(HW062)**

Editor's Note: This section is being republished to correct an error. This rule can be viewed in its entirety in the October 20, 1999 edition of the *Louisiana Register* on pages 1798-1803.

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Hazardous Waste regulations, LAC 33:V.517, 1529, 2201-2269, 2273, 4357, and 5120 (Log #HW062).

The rule states that if land disposal by deep well injection has been exempted by the US EPA from the land disposal prohibitions; a permit has been issued for the injection well by the Louisiana Office of Conservation; and the secretary of the Department of Environmental Quality has made a determination that there are no economically reasonable and environmentally sound alternatives to the injection of such hazardous waste, then the land disposal restrictions do not apply to the disposal of the hazardous waste by injection well. The US EPA currently reviews and renders a decision on all petitions for exemption from the land disposal restrictions for hazardous waste disposal by injections wells.

The Louisiana Office of Conservation is authorized to review and render a decision on applications for permits for all types of injection wells, including hazardous waste injection wells. This rule change will eliminate the department's duplication of work done by the US EPA and the Louisiana Office of Conservation. However, the department does retain the authority to grant or deny the use of injection wells for the disposal of hazardous waste based on the availability of economically reasonable and environmentally sound alternative methods of disposal. The basis and rationale for this rule is to bring the regulations in line with R.S. 30:2193.

This 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.

Title 33

ENVIRONMENTAL QUALITY

Part V. Hazardous Waste and Hazardous Materials

Subpart 1. Department of Environmental Quality Hazardous Waste

Chapter 5. Permit Application Contents

Subchapter D. Part II General Permit Information Requirements

§517. Part II Information Requirements (the Formal Permit Application)

The formal permit application information requirements presented in this Section reflect the standards promulgated in LAC 33:V.Subpart 1. These information requirements are necessary in order to determine compliance with all standards. Responses and exhibits shall be numbered sequentially according to the technical standards. The permit application must describe how the facility will comply with each of the sections of LAC 33:V.Chapters 15-37 and 41. Information required in the formal permit application shall be submitted to the administrative authority and signed in accordance with requirements in LAC 33:V.509. The description must include appropriate design information (calculations, drawings, specifications, data, etc.) and administrative details (plans, flow charts, decision trees, manpower projections, operating instructions, etc.) to permit the administrative authority to determine the adequacy of the hazardous waste permit application. Certain technical data, such as design drawings, specifications, and engineering studies, shall be certified by a registered professional engineer. If a section does not apply, the permit application must state it does not apply and why it does not apply. This information is to be submitted using the same numbering system and in the same order used in these regulations:

[See Prior Text in A-U]

V. for land disposal facilities, if an approval has been granted under LAC 33:V.2239, a petition has been approved under LAC 33:V.2241 or 2271, or a determination made under LAC 33:V.2273, a copy of the notice of approval or a determination is required; and

[See Prior Text in W]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR

10:280 (April 1984), LR 13:433 (August 1987), LR 14:790 (November 1988), LR 15:181 (March 1989), LR 15:378 (May 1989), LR 16:220 (March 1990), LR 16:399 (May 1990), LR 16:614 (July 1990), LR 16:683 (August 1990), LR 17:658 (July 1991), LR 18:1256 (November 1992), LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:657 (April 1998), LR 24:1691 (September 1998), LR 25:436 (March 1999), LR 25:1465 (August 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1799 (October 1999), repromulgated LR 26:1609 (August 2000).

James H. Brent, Ph.D.
Assistant Secretary

0008#041

RULE

**Department of Environmental Quality
Office of Environmental Assessment
Environmental Planning Division**

Louisiana Pollutant Discharge Elimination
System (LPDES) Program (WP040)
(LAC 33:IX.2301, 2531 and 2533)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Water Quality regulations, LAC 33:IX.2301, 2531, and 2533 (Log #WP040*).

This rule is identical to federal regulations found in 40 CFR parts 136 and 40 CFR Chapter I, Subchapter N, 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 rule; therefore, the rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

This rule will update the CFR references in Chapter 23 to the current 1999 CFR. Authorized programs are required to adopt changes made to the federal regulations. The basis and rationale for this rule are to keep the LPDES program current with federal rules that are incorporated by reference into the state regulations.

This 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 rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

**Title 33
ENVIRONMENTAL QUALITY
Part IX. Water Quality Regulations**

**Chapter 23. The Louisiana Pollutant Discharge
Elimination System (LPDES) Program
Subchapter A. Definitions and General Program
Requirements**

§2301. General Conditions

(See Prior Text in A - E)

F. All references to the *Code of Federal Regulations* (CFR) contained in this Chapter (e.g., 40 CFR 122.29) shall

refer to those regulations published in the July 1999 *Code of Federal Regulations*, unless otherwise noted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:199 (February 1997), LR 23:722 (June 1997), LR 25:1467 (August 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1609 (August 2000).

Subchapter N. Incorporation by Reference

The Louisiana Department of Environmental Quality incorporates by reference the following federal requirements.

§2531. 40 CFR Part 136

Title 40 (Protection of the Environment) *Code of Federal Regulations* (CFR) part 136, Guidelines Establishing Test Procedures for the Analysis of Pollutants, revised July 1, 1999, in its entirety.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:958 (August 1997), LR 25:1467 (August 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1609 (August 2000).

§2533. 40 CFR Chapter I, Subchapter N

Title 40 (Protection of the Environment) CFR, chapter I, subchapter N (Effluent Guidelines and Standards), revised July 1, 1999, parts 401 and 402, and parts 404 - 471 in their entirety.

(Note: General Pretreatment Regulations for Existing and New Sources of Pollution found in part 403 of Subchapter N have been included in these regulations as Subchapter T.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:958 (August 1997), amended LR 25:1467 (August 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1609 (August 2000).

James H. Brent, Ph.D.
Assistant Secretary

0008#020

RULE

**Firefighters' Pension and Relief Fund
City of New Orleans and Vicinity**

Partial Lump-Sum Option Payment
(LAC 58:V.1901 and 1903)

Editor's Note: This rule is being repromulgated to correct a citation error. The original version may be viewed in the February 20, 2000 issue of the Louisiana Register.

The Board of Trustees of the Firefighters' Pension and Relief Fund for the City of New Orleans (fund), pursuant to R.S. 11:3363(F), has added chapter LAC 58:V.19, Sections 1901 and 1903 in accordance with the Administrative Procedure Act. This chapter notifies the public that the board will offer an optional form of distribution of a member's retirement benefit as an initial partial lump sum benefit with a reduced monthly annuity payable for life. This Rule implements Act No. 1377 of the 1999 regular session.

Title 58
RETIREMENT

**Part V. Firefighters' Pension and Relief Fund for the
City of New Orleans and Vicinity**

Chapter 19. Partial Lump-Sum Option Payment

§1901. General Rules for Participation

A. If a member has not participated in the DROP, upon application for retirement, he may elect to receive the actuarial equivalent of his retirement benefit as a reduced monthly benefit, payable for life, plus an initial lump-sum benefit. The amount of the initial lump-sum benefit, as determined by the member, shall not exceed an amount equal to the member's normal retirement benefit times 60.

B. The member's monthly retirement will be actuarially reduced based on the lump-sum amount withdrawn and the member's age at retirement. The partial lump-sum benefit, together with the member's reduced normal retirement benefit, must be actuarially equivalent to the member's normal retirement benefit as set forth in R.S. 11:3384.

C. The cost of living adjustment (COLA) granted by the Board of Trustees to retirees who elect to receive a reduced retirement benefit and a partial lump-sum benefit shall be based only on the reduced retirement benefit and shall not be based on the partial lump-sum benefit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:3363, and 3385.1.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the Firefighters' Pension and Relief Fund for the City of New Orleans, LR 26:291 (February 2000), repromulgated LR 26:1610 (August 2000).

**§1903. Distributions from Partial Lump-Sum Option
Payment**

A. Distributions from the partial lump-sum option payment (PLOP) elected by the member are not eligible for rollover as is the case with DROP accounts. However, the amount of the PLOP may be left with the Fund and subject to the rules applicable to distribution of DROP accounts.

1. As detailed in those rules applicable to DROP accounts, allowable distributions vary depending upon whether the member retires before, during or after the calendar in which the member reaches age 55.

B. A member who retires before the calendar year in which the member reaches age 55 may receive distribution of his PLOP at retirement and avoid incurrence of the 10 percent early distribution penalty. In the event the PLOP remains on deposit with the Fund, all distribution rules applicable to DROP accounts apply, including the 10 percent early distribution penalty and recapture penalty, if applicable.

C. A member who retires during or after the calendar year in which the member reaches age 55 may receive distribution of his PLOP account in accordance with rules applicable to DROP accounts, will not be subject to the 10 percent early distribution penalty or recapture penalty, but will be subject to those DROP rules requiring mandatory distributions of the account.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:3363, and 3385.1.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the Firefighters' Pension and Relief Fund for the City of New Orleans, LR 26:291 (February 2000), repromulgated LR 26:1610 (August 2000).

Richard Hampton
Secretary-Treasurer

0008#016

RULE

**Office of the Governor
Office of Elderly Affairs**

State Plan on Aging
(LAC 4:VII.1301 - 1323)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Governor's Office of Elderly Affairs (GOEA) has repealed and amended LAC 4:VII 1301-1323.

The purpose of this amended rule is to acknowledge that the Office of Elderly Affairs will develop a State Plan that will be submitted to the U. S. Department of Health and Human Services, Administration on Aging to receive grants from its allotment under Title III of the Older Americans Act of 1965 as amended (the Act). Title III authorizes formula grants to state agencies on aging to assist states and local communities to develop comprehensive and coordinated systems for the delivery of services to older persons.

Title 4

ADMINISTRATION

Part VII. Governor's Office

Chapter 13. State Plan on Aging

§1301. State Plan On Aging

A. To receive funding from the Older Americans Act the State Agency on Aging must have an approved State Plan on Aging. This plan must be on file with the Administration on Aging and be available for public review. At the minimum, the plan must include:

1. identification by the State of the sole State agency that has been designated to develop and administer the plan;
2. statewide program objectives to implement the requirements under Title III of the Act and any objectives established by the Commissioner through the rulemaking process;
3. a resource allocation plan indicating the proposed use of all Title III funds administered by the State agency and the distribution of Title III funds to each planning and service area;
4. identification of the geographic boundaries of each planning and service area and of area agencies on aging;
5. prior Federal fiscal year information related to low income minority and rural older individuals;
6. all assurances and provisions as outlined in the Older Americans Act and regulations, as well as the following assurances:
 - a. preference is given to older persons in greatest social or economic need in the provision of services under the plan;
 - b. procedures exist to ensure that all services under this part are provided without use of any means tests;
 - c. all services provided under Title III meet any existing State and local licensing, health and safety requirements for the provisions of those services;
 - d. older persons are provided opportunities to voluntarily contribute to the cost of services;

e. other such assurances as are needed for compliance with the Act, Regulations, other applicable federal law, State Statutes, and/or State policy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:932(8).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 19:1317 (October 1993), repealed and promulgated LR 23:1146 (September 1997), repealed and promulgated LR 26:1611 (August 2000).

§1303. Development of the State Plan

A The State Agency will develop a State Plan according to the following:

1. elect to utilize a one, two, three, or four-year format for the State Plan;
2. develop a data profile on the older Louisianian from available census data;
3. conduct statewide needs assessment activities including, but not limited to, public hearings;
4. assurances for state and area agencies on aging as set forth by the Older Americans Act;
5. goals and objectives;
6. publicize public hearing(s) giving dates, times, locations to public officials and other interested parties for their participation;
7. conduct public hearings and incorporate written and verbal comments into the revised Plan, as appropriate;
8. submit final revised plan for approval by the Governor;
9. submit approved plan from the Governor to the Administration on Aging Regional Office for approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:932(8).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 19:1317 (October 1993), repealed and promulgated LR 23:1146 (September 1997), repealed and promulgated LR 26:1611 (August 2000).

§1305. Intrastate Funding Formula

A. Intrastate Funding Formula

1. The following is a descriptive summary of the current Intrastate Funding Formula's assumptions and goals, and the application of the definitions of greatest economic or social need and a demonstration of the allocation of funds, pursuant to the formula, to each PSA.

2. Descriptive Statement

a. The current intrastate funding formula for the distribution of Older Americans Act Title III funds in Louisiana provides for a base allocation by parish. The following factors are considered in the distribution of funds remaining after base allocations are made: population aged 60 and over; population aged 60 and over below the Bureau of the Census poverty threshold; population aged 75 and over; and land area in square miles. Each of these factors is derived by dividing the planning and service area total by the state total.

b. Population aged 60 and over, and land area in square miles is assigned weights of one each. Population aged 60 and over below the Bureau of the Census poverty threshold is assigned a weight of nine-tenths. Population aged 75 and over is assigned a weight of one-tenth. The sum of these four factors is three.

c. Those elderly in greatest economic need are defined as persons aged 60 and older whose incomes are at or below the poverty threshold established by the Bureau of

the Census. Those elderly in greatest social need are defined as persons aged 60 and over who have needs based on noneconomic factors such as social isolation caused by living in remote areas, or who are especially vulnerable due to the heightened possibility of frailty among elderly aged 75 and older. Other social needs are those, which restrict an elderly individual's ability to perform normal daily tasks, or which restrict his or her ability to live independently; they can be caused by racial or ethnic status, or language barriers. The intra-state funding formula accounts for these individuals by not allocating funds solely on the basis of population. The land area in square miles factor is included to compensate area agencies serving predominantly rural areas for the special problems encountered by sparse populations who may be spread over large geographical areas. The four funding factors combine to meet the special needs of socially and economically needy elderly, urban elderly and rural elderly.

d. The base funding allocation of \$12,000 per parish is established on the assumption that this amount represents a minimum allocation for the administration of Older Americans Act programs. There is an increasing need to provide a continuum of care for the very old (aged 75 and older) as this segment of the population gets larger each year. Funding limitations dictate that this group is given special emphasis.

3. Numerical Statement of the Intrastate Funding Formula

- a. Base allocation per PSA: \$12,000 per parish
- b. Formula Allocation per PSA:

| Factors | Weight |
|---|--------|
| i. <u>PSA 60+Population</u> | |
| State 60+Population | 1.0 |
| ii. <u>PSA 60+Population</u> | |
| <u>Below Poverty Threshold</u> | |
| State 60+Population | |
| Below Poverty Threshold | 0.9 |
| iii. <u>PSA Land Mass in Square Miles</u> | |
| State Land Mass in Square Miles | 1.0 |
| iv. <u>PSA 75+Population</u> | |
| State 75+Population | 0.1 |
| v. Sum | 3.0 |
| 4. $\frac{\text{PSA Formula} = (i) \times 1 + (ii) \times 0.9 + (iii) \times 1 + (iv) \times 0.1}{3}$ | |

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:932(8)

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 23:1146 (September 1997),repealed and promulgated LR 26:1611 (August 2000).

§1307-1323. Reserved

Paul F. "Pete" Arceneaux
Executive Director

0008#035

RULE

Department of Health and Hospitals Board of Dentistry

Restricted Licensees; Adverse Sanctions; Temporary Licensees; Licensure by Credentials; Dental Assistant Duties; Curriculum Development for Expanded Duty Dental Assistants; Local Anesthesia; Air Abrasion Units; Exemptions; and Violations
(LAC 46:XXXIII.105, 116, 120, 306, 502, 503, 706, 710, 1305, 1607 and 1619)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950, et seq., the Dental Practice Act, R.S. 37:751, et seq., and particularly R.S. 37:760(8), notice is hereby given that the Department of Health and Hospitals, Board of Dentistry hereby amends LAC 46:XXXIII.105, Restricted Licensees, 116 Reconsideration of Adverse Sanctions, 120 Temporary Licensees, 306 Requirements of Applicants for Licensure by Credentials (dentists), 502 Authorized Duties of Expanded Duty Dental Assistants, 503 Guide to Curriculum Development for Expanded Duty Dental Assistants, 706 Requirements of Applicants for Licensure by Credentials (hygienists), 710 Administration of Local Anesthesia For Dental Purposes, 1305 Air Abrasion Units, 1607 Exemptions and 1619 Violations. No preamble has been prepared.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XXXIII. Dental Health Professions

Chapter 1. General Provisions

§105. Restricted Licensees

A. All applicants for a restricted license must successfully complete the Louisiana State Board of Dentistry examination in jurisprudence within 60 days of receiving said license, except those licenses issued for less than one year.

B. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 21:571 (June 1995), amended LR 22:23 (January 1996), LR 23:1529 (November 1997), LR 26:1612 (August 2000).

§116. Reconsideration of Adverse Sanctions

A. - C. ...

D. If the committee decides that the application is without substantial merit, it shall so inform the officers of the board and, thereafter, one officer shall be appointed to notify the applicant, in writing, of said unfavorable action. The applicant is not thereafter entitled to appear before the full board relative to this application; only applications which have been found to have substantial merit by the committee are to be submitted to the full board.

E. The full board, at its next meeting, may consider those applicants found by the committee to have substantial merit in open meeting if requested to do so by the applicant. In the absence of such a request, the board shall entertain the matter in executive session. In the course of the board's review, if it deems necessary, it may require the applicant and all supporting references to appear in person before the

board for the purpose of affording the board an opportunity to interview each person first hand. All expenses for the attendance of the applicant and his/her personal references shall be borne by the applicant. Moreover, the board shall prescribe time limitations for all speakers appearing before it and order such other considerations as will promote a fair and orderly meeting.

F. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:1113 (June 1998), amended LR 26:1612 (August 2000).

§120. Temporary Licensees

A. Under R.S. 37:760(6), the board is authorized to issue licenses in conformity with the Louisiana Dental Practice Act. However, under R.S. 37:752(8), dentists and dental hygienists may obtain a temporary license without satisfying all licensing requirements of the Louisiana Dental Practice Act provided the applicant applies for a full license by taking an examination at the next time the clinical licensure examination is given by the board or by applying for licensure by credentials for the nearest scheduled board meeting. In order to protect the public and to avoid abuses of this exemption, the board shall not award a temporary license to any dentist under the provisions of R.S. 37:752(8), and will not award a temporary license to any dental hygienist within 60 days before or 60 days after the clinical licensing examination is given. Under no circumstances shall a temporary license awarded to a dental hygienist be in effect for any period longer than seven months. Section 120 does not prohibit the awarding of temporary licenses to dentists who are seeking exemptions under R.S. 37:752(4).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:1114 (June 1998), amended LR 26:1612 (August 2000).

Chapter 3. Dentists

§306. Requirements of Applicants for Licensure by Credentials

A. Before any applicant is awarded a license according to his/her credentials in lieu of an examination administered by the board, said applicant shall provide to the board satisfactory documentation evidencing:

1. - 15. ...

16. has furnished three current letters of current recommendation from professional associates, i.e. associations, boards, or prior employers listed on application for licensure on letterhead stationery from said organization;

17. - 20. ...

B. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and R.S. 37:768.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 18:739 (July 1992), amended LR 21:571 (June 1995), LR 22:23 (January 1996), LR 23:1528 (November 1997), LR 24:1114 (June 1998), LR 25:513 (March 1999), LR 26:1612 (August 2000).

Chapter 5. Dental Assistants

§502. Authorized Duties of Expanded Duty Dental Assistants

A. A person licensed to practice dentistry in the state of Louisiana may delegate to any expanded duty dental

assistant any chairside dental act that said dentist deems reasonable, using sound professional judgment. Such act must be performed properly and safely on the patient and must be reversible in nature. Furthermore, the act must be under the direct supervision of the treating dentist. However, a dentist may not delegate to an expanded duty dental assistant:

1. - 15. ...

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 19:205 (February 1993), amended LR 21:569 (June 1995), LR 22:1217 (December 1996), LR 24:1115 (June 1998), LR 26:1613 (August 2000).

§503. Guide to Curriculum Development for Expanded Duty Dental Assistants

A. ...

B. The following is a model outline for the expanded duty dental assistant course. The hours are to be allocated by the instructor in accordance with current law:

1. - 15. ...

16. clinical and written exams;

17. lecture on the placement of pit and fissure sealant;

18. lab on placement of pit and fissure sealant; performance evaluation lab shall be practicing on typodonts.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 19:205 (February 1993), amended LR 22:22 (January 1996), LR 24:1115 (June 1998), LR 26:1613 (August 2000).

Chapter 7. Dental Hygienists

§706. Requirements of Applicants for Licensure by Credentials

A. Before any applicant is awarded a license according to his/her credentials in lieu of an examination administered by the board, said applicant shall provide to the board satisfactory documentation evidencing that he/she:

1. - 14. ...

15. has furnished three current letters of current recommendation from professional associates, i.e. associations, boards, or prior employers listed on application for licensure on letterhead stationery from said organization;

16. - 19. ...

B. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and R.S. 37:768.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 18:737 (July 1992), amended LR 21:570 (June 1995), LR 22:23 (January 1996), LR 24:1117 (June 1998), LR 25:513 (March 1999), LR 26:1613 (August 2000).

§710. Administration of Local Anesthesia for Dental Purposes

A. - E. ...

F. Deleted.

G. - I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:1292 (July 1998), amended LR 26:1613 (August 2000).

Chapter 13. Dental Laser and Air Abrasion Utilization §1305. Air Abrasion Units

A. Utilization of air abrasion units by licensed dental hygienists and dental auxiliaries is prohibited. However, this does not prevent the utilization of air polishing units by licensed dental hygienists.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 19:334 (March 1993), amended LR 24:1117 (June 1998), LR 26:1613 (August 2000).

Chapter 16. Continuing Education Requirements

§1607. Exemptions

A. - B. ...

C. Due to the fact that dental and dental hygiene licenses are issued on a biennial basis, dentists and dental hygienists must accumulate one-half of the continuing education hours required under LAC 46:XXXIII.1611 and 1613 during the second year of the biennial period in which they received their initial licensure. For example, if a dentist receives his license immediately after graduation in June 1999, and he/she does not have to renew his/her license until the year 2001, that licensee need only accumulate 20 hours of continuing education, one-half of which must be clinical.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8), (13).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 20:661 (June 1994), amended LR 24:1117 (June 1998), LR 26:1613 (August 2000).

§1619. Violations

A. Violation Table

| | Minimum | Maximum |
|---|------------|------------|
| 1. First violation of continuing education | \$500.00 | \$2,000.00 |
| a. For completion of 3/4th or more of the requirement | \$500.00 | |
| b. For completion of 1/2 to 3/4th of the requirement | \$1,000.00 | |
| c. For completion of 1/4th to 1/2 of the requirement | \$1,500.00 | |
| d. For completion of 0 to 1/4th of the requirement | \$2,000.00 | |
| 2. Second violation | \$1,000.00 | \$4,000.00 |
| 3. All continuing education not completed on time shall be completed no later than August of the following calendar year and shall not count toward the continuing education requirements of the subsequent renewal period. | | |
| 4. A second violation of the continuing education requirements shall be reported to the National Practitioner Data Bank, whereas the first violation will not. | | |
| 5. After a second violation of continuing education requirements, the licensee shall be placed on a minimum of a two-year period of probation, depending upon the number of hours not completed. | | |
| 6. A third violation of continuing education requirements will result in the suspension of a dental or dental hygiene license for a period of not less than six months. | | |
| 7. Any subsequent violation of continuing education requirements will result in the revocation of a dental or dental hygiene license. | | |

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8)and(13).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR: 26:1614 (August 2000).

C. Barry Ogden
Executive Director

0008#012

RULE

**Department of Health and Hospitals
Board of Nursing**

**Criminal History Record Information
(LAC 46:XLVII.3330)**

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Board of Nursing (board) pursuant to the authority vested in the board by R.S. 37:918, R.S. 37:919 has amended the Professional and Occupational Standards pertaining to the criminal history record information. The 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 26:1614 (August 2000).

Barbara L. Morvant
Executive Director, M.N., R.N.

0008#037

RULE

**Department of Health and Hospitals
Board of Nursing**

Disciplinary Proceedings (LAC 46:XLVII.3403 and 3404)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Board of Nursing (board) pursuant to the authority vested in the board by R.S. 37:918 and R.S. 37:919 has amended 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 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 26:1615 (August 2000).

§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 26:1615 (August 2000).

Barbara L. Morvant
Executive Director

0008#038

RULE

**Department of Health and Hospitals
Board of Nursing**

Official Office of the Board
(LAC 46:XLVII.3305)

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 has amended the Professional and Occupational Standards pertaining to the appointing authority of the executive director. The 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 26:1615 (August 2000).

Barbara L. Morvant
Executive Director

0008#036

RULE

**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 amends the referenced rule.

The full text of this 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.

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 26:1616 (August 2000).

Malcolm J. Broussard, RPh
Executive Director

0008#034

RULE

**Department of Health and Hospitals
Office of Public Health**

Sanitary CodeCCommercial Body Art

In accordance with the Administrative Procedure Act, the Department of Health and Hospitals, Office of Public Health, Division of Environmental Health Services, Sanitarian Services Section, Food and Drug Unit is adopting the following rules pertaining to the regulation of commercial body art facilities. These rules are being promulgated as required by Act 393 of 1999 which enacted LSA - R.S. 40:2831 through 40:2834.

These final rules will be incorporated into the State Sanitary Code and, when adopted, will become Chapter XXVIII of that Code as provided for in LSA - R.S. 40:4.

This chapter of the Sanitary Code establishes uniform rules for the operation of commercial body art facilities within the state. A commercial body art facility means any location, place, area, or business, whether permanent or temporary, which provides consumers access to personal service workers who for remuneration perform tattooing of the skin, body piercing or the application of permanent cosmetics to the skin. These rules do not apply to ear piercing with a disposable single-use stud or solid needle that is applied using a mechanical device to force the needle or stud through the ear. These rules do not apply to physicians licensed by the Louisiana State Board of Medical Examiners.

Chapter XXVIII. Commercial Body Art Regulation

28:001. Definitions

A. Unless otherwise specifically provided herein, the following words and terms used in this Chapter of the Sanitary Code are defined for the purposes thereof as follows:

*Antiseptic*CAn agent that destroys disease causing microorganisms on human skin or mucosa.

*Aftercare*Cwritten instructions given to the consumer, specific to the body art procedure(s) rendered, on caring for the body art and surrounding area. These instructions will include information when to seek medical treatment, if necessary.

*Body Art*Cthe practice of physical body adornment by registered establishments and operators utilizing, but not limited to, the following techniques: tattooing, cosmetic tattooing, body piercing, branding and scarification. This definition does not include practices that are considered medical procedures by a state medical board, such as implants under the skin, and shall not be performed in a commercial body art facility. This definition does not include the piercing of the lobe of the ear using pre-sterilized single use stud and clasp ear piercing system.

*Body Piercing*Cpuncturing or penetration of the skin of a person using pre-sterilized single use needles and the insertion of pre-sterilized jewelry or other adornment thereto in the opening, except puncturing the lobe of the ear using a pre-sterilized single use stud and clasp ear piercing system shall not be included in this definition.

*Branding*Cinducing a pattern of scar tissue development by means of a heated instrument.

*Client*Ca consumer requesting the application of a tattoo, body piercing services or permanent cosmetic application services.

*Commercial Body Art Facility*Cas defined herein and in LSA-R.S. 40:2831(1) means any location, place, area, or business, whether permanent or temporary, which provides consumers access to personal services workers who for remuneration perform any of the following procedures:

a. tattooing or the insertion of pigment under the surface of the skin of a human being, by pricking with a needle or otherwise, to produce an indelible mark or figure visible under the skin;

b. body piercing or the creation of an opening in the body of a human being for the purpose of inserting jewelry or other decoration; but does not for the purposes of this Chapter, include piercing an ear with a disposable, single use stud or solid needle that is applied using a mechanical device to force the needle or stud through the ear;

c. the application of permanent cosmetics or pigments under the skin of a human being for the purpose of permanently changing the color or other appearance of the skin, including but not limited to permanent eyeliner, eye shadow, or lip color.

*Contaminated Waste*Cany liquid or semi-liquid blood or other potentially infectious materials; contaminated items that would release blood or other potentially infectious materials in a liquid or semi-liquid state if compressed; items that are caked with dried blood or other potentially

infectious materials and are capable of releasing these materials during handling; sharps and any wastes containing blood and other potentially infectious materials, as defined in 29 Code of Federal Regulations Part 1910.1030 (latest edition), known as "Occupational Exposure to Bloodborne Pathogens."

Consumer—Any individual who is provided access to a commercial body art facility which is required to be registered pursuant to the provisions of this chapter.

Disinfection—the destruction of disease-causing microorganisms on inanimate objects or surfaces, thereby rendering these objects safe for use or handling.

Department—the Department of Health and Hospitals.

Ear Piercing—the puncturing of the lobe of the ear using a pre-sterilized single use stud and clasp ear piercing system following manufacturers instructions.

Equipment—all machinery, including fixtures, containers, vessels, tools, devices, implements, furniture, display and storage areas, sinks and all other apparatus and appurtenances used in connection with the operation of a commercial body art facility.

Hand Sink—a lavatory equipped with hot and cold running water under pressure, used solely for washing hands, arms or other portions of the body.

Invasive—entry into the body either by incision or insertion of an instrument into or through the skin or mucosa, or by any other means intended to puncture, break or compromise the skin or mucosa.

Jewelry—any personal ornament inserted into a newly pierced area, which must be made of surgical implant grade stainless steel, solid 14k or 18k white or yellow gold, niobium, titanium or platinum, a dense, low-porosity plastic and which is free of nicks, scratches or irregular surfaces and which has been properly sterilized prior to use.

Manager—any individual designated by the owner to manage the daily business of a commercial body art facility.

Operator—any individual designated by the registrant to apply or to assist in the performance of body art procedures upon the consumer for remuneration. The term includes technicians who work under the operator and perform body art activities.

Owner—any person who operates a commercial body art facility.

Person—any natural person, partnership, corporation, association, governmental subdivision, receiver, tutor, curator, executor, administrator, fiduciary, or representative of another person, or public or private organization of any character.

Protective Gloves—gloves made of vinyl or latex.

Registrant—any person who is registered with the department as required by R.S. 40:2832.

Sanitize—to adequately treat equipment by a process that is effective in destroying vegetative cells of microorganisms of public health significance, and in substantially reducing numbers of other undesirable microorganisms without adversely affecting the equipment or its safety for the consumer.

Sharps—any object (sterile or contaminated) that may purposefully or accidentally cut or penetrate the skin or mucosa including, but not limited to, pre-sterilized, single use needles, scalpel blades and razor blades.

Sharps Container—a puncture-resistant, leak-proof container that can be closed for handling, storage, transportation and disposal and is labeled with the international "biohazard" symbol.

Single Use—products or items that are intended for one-time, one-person use and are disposed of after use on each client including, but not limited to, cotton swabs or balls, tissues or paper products, paper or plastic cups, gauze and sanitary coverings, razors, piercing needles, scalpel blades, stencils, ink cups and protective gloves.

Sterilization—a very powerful process resulting in the destruction of all forms of microbial life, including highly resistant bacterial spores.

Tattooing—any method of placing ink or other pigment into or under the skin or mucosa by the aid of needles or any other instruments used to puncture the skin, resulting in permanent coloration of the skin or mucosa. This includes all forms of cosmetic tattooing.

Temporary Commercial Body Art Facility—any place or premise operating at a fixed location where an operator performs body art procedures for no more than 14 days consecutively in conjunction with a single event or celebration.

Temporary Demonstration Registration—the registration issued by the Department to a *temporary commercial body art facility*, as defined herein, as required by Section 28:018 of this Chapter and R.S. 40:2832 for a period of time not to exceed 14 consecutive calendar days.

Temporary Operator Registration—the registration issued by the Department to an *operator*, as defined herein, to perform body art procedures at a temporary commercial body art facility approved and registered by the Department.

Universal Precautions—a set of guidelines and controls, published by the Center for Disease Control (CDC) as "guidelines for prevention of transmission of human immunodeficiency virus and hepatitis B virus to health-care and public-safety workers" in Morbidity and Mortality Weekly Report (MMWR), June 23, 1989, Vol. 38, No. S-6, and as "recommendations for preventing transmission of human immunodeficiency virus and hepatitis B virus to patients during exposure-prone invasive procedures," in MMWR, July 12, 1991, Vol. 40, No. RR-8. This method of infection control requires the employer and the employee to assume that all human blood and specified human body fluids are infectious for HIV, HBV and other blood pathogens. Precautions include hand washing, gloving, personal protective equipment, injury prevention, and proper handling and disposal of needles, other sharp instruments, and blood and body fluid contaminated products.

28:002. Facility Standards

All commercial body art facilities shall meet the following criteria.

28:002-1. All areas shall be kept clean and in good repair.

28:002-2. All procedure surfaces, including counters, tables, equipment, chairs, or recliners, that are in treatment and sterilization areas shall be made of smooth, nonabsorbent, and nonporous materials.

28:002-3. All wall, floor, and ceiling surfaces within each procedure area shall be smooth, free of open holes or cracks, light colored, washable and in good repair. Walls, floors and ceilings shall be maintained in a clean condition.

28:002-4. Surfaces or blood spills shall be cleaned using an EPA registered, hospital-grade disinfectant.

28:002-5. Each facility shall provide a handwashing sink to be used solely for handwashing in body art procedure area for the exclusive use of the operator. A separate restricted area away from public access shall be provided in each facility for the purpose of handling contaminated equipment, instruments and sterilization operations. Also, a separate instrument sink shall be provided for the sole purpose of cleaning instruments and equipment prior to sterilization in addition to the sink that is located in the restrooms. These sinks shall be provided with hot (120 degrees Fahrenheit minimum) and cold running water under pressure dispensed from a mixing valve. There shall also be available at all sinks and lavatories, powdered or liquid soap in a soap dispenser, disposable single use towels or automatic hand drying device, and a refuse container.

28:002-6. Toilet facilities shall be kept clean and in good repair and in working order at all times. If only one restroom is provided, it must contain a water closet and a handwashing sink equipped with a powdered or liquid soap dispenser and disposable single use towels or automatic hand drying device, as must all restrooms.

28:002-7. The facility shall be provided with adequate and sufficient artificial or natural lighting equivalent to at least 20 foot candles three feet off the floor, except that at least 100 foot candles shall be provided at the level where the body art procedure is being performed, and where instruments and sharps are assembled.

28:002-8. The facility shall be well ventilated with natural or mechanical methods that remove or exhaust fumes, vapors, or dust in order to prevent hazardous conditions from occurring or to allow the free flow of air in a room in proportion to the size of the room and the capacity of the room.

28:002-9. If a room used for any business purposes other than body art procedures is the same room or is adjacent to a room used for body art procedures, then the department may require that one or more of the following requirements be satisfied if there are conditions that the department considers a possible threat to the health of the employees, the customers, or the public:

(a) A solid partition shall separate the premises used for other business purposes from the commercial body art area. The partition may contain a door, provided it remains closed except for entering and leaving.

(b) A separate outside entrance shall be provided for the facility.

28:002-10. Pets or other animals shall not be permitted in the commercial body art facility. This prohibition shall not apply to trained guide animals for the disabled, sightless, or hearing impaired; or fish in aquariums.

28:003. Required equipment; articles and materials: Commercial body art facility registrants and operators shall provide and maintain the following tattooing and/or piercing equipment and supplies at the place of business:

28:003-1. Tattoo machine or hand pieces, of non porous material which can be sanitized;

28:003-2. Stainless steel or carbon needles and needle bars;

28:003-3. Stainless steel, brass or lexan tubes that can be sanitized;

28:003-4. Stencils, plastic acetate or single use disposable carbon paper;

28:003-5. Sterilization bags with color strip indicator;

28:003-6. Disposable protective gloves;

28:003-7. Single use or disposable razors, tongue depressors, lubricants or medicines;

28:003-8. Single use towels, tissues or paper products;

28:003-9. Sharps container and BIOHAZARD waste bags;

28:003-10. Commercially purchased inks, dyes and pigments;

28:003-11. A trash receptacle(s);

28:003-12. Commercially available spore tests performed monthly;

28:003-13. Single-use hollow piercing stainless steel needles;

28:003-14. Approved equipment for cleaning and sterilizing instruments;

28:003-15. All tables or chairs made of nonporous material that can be cleaned and sanitized;

28:003-16. All piercing instruments shall be made of stainless steel;

28:003-17. Bleach or hard-surface disinfectants, or both;

28:003-18. Antibacterial hand soap; and

28:003-19. Minimum of 10 pre-sterilized needle/tube packs or 10 single use needle/tube packs per artist in respect to tattooist.;

28:004. Practice standards; restrictions

28:004-1. Prior to any body art procedure, a consent form shall be completed and signed by each client. Aftercare instructions shall be given to the client both verbally and in writing after every service. The written care instructions shall advise the client to consult the body art operator or a qualified health care professional at the first sign of abnormal inflammation/swelling or possible infection.

28:004-2. Registrants may obtain advice from physicians regarding medical information needed to safeguard consumers and body art operators.

28:004-3.

(a). Registrants shall keep an individual written record of each client. That record shall include the name and address of the client; the date of each service; description of service; the color, manufacturer and lot number of each of each pigment used for each tattoo or permanent cosmetic procedure performed.

(b). The following information should be requested by the registrant or operator and recorded on the client's written record required in 28:004-3(a): In order to promote proper healing of the body art procedure performed, we ask that you disclose if you have, or have had, any of the following conditions which may affect the healing process:

a. diabetes;

b. history of hemophilia (bleeding);

c. history of skin diseases, skin lesions or skin sensitivities to soap, disinfectants, etc.;

d. history of allergies or adverse reactions to pigments, dyes or other skin sensitivities;

e. history of epilepsy, seizures, fainting or narcolepsy.

f. pregnancy or breast-feeding/nursing;

g. immune disorders;

h. scarring (keloid).

(c). Each commercial body art facility shall display a sign clearly visible to each client which bears the following wording: "There may be risks associated with the procedures of commercial body art, which includes permanent tattoos, body piercing and permanent cosmetic application, that may adversely affect the healing process if you have, or have had, any of the following conditions:

- a. diabetes;
- b. history of hemophilia (bleeding);
- c. history of skin diseases, skin lesions or skin sensitivities to soap, disinfectants, etc.;
- d. history of allergies or adverse reactions to pigments, dyes or other skin sensitivities;
- e. history of epilepsy, seizures, fainting or narcolepsy.
- f. pregnancy or breast-feeding/nursing;
- g. immune disorders;
- h. scarring (keloid).

The sign required in this sub-section shall be printed in upper and lower case letters which are at least one-half inch and one-quarter inch in height respectively.

28:004-4. For permanent cosmetic procedures, operators shall take photographs for corrective procedures before and after the procedure and retain such photographs.

28:004-5. Records shall be kept for a minimum of three years.

28:004-6. Inks, dyes, or pigments shall be purchased from a commercial supplier or manufacturer. Products banned or restricted by the Food and Drug Administration shall not be used.

28:004-7. Registrants or operators shall not perform tattooing and body piercing for any of these individuals:

- a. On a person who is inebriated or appears to be incapacitated by the use of alcohol or drugs;
- b. On persons who show signs of intravenous drug use;
- c. On persons with sunburn or other skin diseases or disorders such as open lesions, rashes, wounds, puncture marks in areas of treatment;
- f. On persons with psoriasis or eczema present in the treatment area;
- e. On persons under 18 years of age without the presence, consent and proper identification of a parent, legal custodian parent or legal guardian as prescribed in R.S. 14:93.2 (A) and (B). Nothing in this section is intended to require an operator to perform any body art procedure on a person under 18 years of age with parental or guardian consent.

28:004-8. Use of a piercing gun to pierce shall be prohibited on all parts of the body, including the outer cartilage perimeter of the ear with the exception of the ear lobe.

28:004-9. Use of personal client jewelry or any apparatus or device presented by the client for use during the initial body piercing shall be sterilized prior to use. Each facility shall provide pre-sterilized jewelry, apparatus, or devices, which shall be of metallic content recognized as compatible with body piercing.

28:004-10. No person afflicted with an infectious or communicable disease that may be transmitted during the performance of body art procedures shall be permitted to work or train in a commercial body art facility.

28:004-11. No commercial body art facility shall require an operator to knowingly work upon a person suffering from any infectious or communicable disease that may be transmitted during the performance of permanent color, tattoo application, or body piercing.

28:004-12. Nothing shall prohibit a commercial body art facility operator from refusing to provide services to anyone under the age of 18.

28:005. Operator Training

28:005-1. Each commercial body art facility registrant shall establish and maintain procedures to ensure that all operators that perform commercial body art procedures receive adequate training and hold a current certificate in CPR, first aid, blood borne pathogens and disease transmission prevention.

28:005-2. Commercial Body Art Trainer means any person who provides training in the commercial body art field to students for a fee. The training facility shall be a fully accredited educational institution and the curriculum shall include training specified in 28:005-1.

28:005-3. Commercial body art facility registrants and owners must only hire operators who have registered with the department and have received training as required in Subsections 28:005-1 and 28:005-2.

28:006. Hand Washing and Protective Gloves

28:006-1. Prior to and immediately following administering services to a client, all registrants and operators shall thoroughly wash their hands and nails in hot, running water with soap and rinse them in clear, warm water.

28:006-2. All registrants and operators shall wear protective gloves during services. Protective gloves shall be properly disposed of immediately following service.

28:006-3. Protective gloves will be changed during a procedure if the need of additional supplies are needed.

28:007. Preparation and Aftercare of Treatment Area on Clients

28:007-1. Body art operators shall cleanse the client's skin, excluding the areas surrounding the eyes, by washing with an EPA-approved antiseptic solution applied with a clean, single-use paper product, before placing the design on the client's skin or beginning tattooing or permanent cosmetic work.

28:007-2. If the area is to be shaved, the operator shall use a single-use disposable safety razor and then rewash the client's skin.

28:007-3. Substances applied to the client's skin to transfer the design from stencil or paper shall be single use.

28:007-4. Aftercare shall be administered to each client following service, as stated in sections 28:004-1 and 28:016-12 of this chapter.

28:008. Cleaning Methods Prior to Sterilization

28:008-1. Each operator shall clean all non-electrical instruments prior to sterilizing by brushing or swabbing to remove foreign material or debris, rinsing, and then performing either of the following steps:

- a. Immersing them in detergent and water in an ultrasonic unit that operates at 40 to 60 hertz, followed by a thorough rinsing and wiping; or

- b. submerging and soaking them in a protein-dissolving detergent or enzyme cleaner, followed by a thorough rinsing and wiping.

28:008-2. For all electrical instruments, each operator shall perform the following:

- a. first remove all foreign matter; and
- b. disinfect with an EPA -registered disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity used according to manufacturer's instructions.

28:009. Instrument Sterilization Standards

28:009-1. Commercial body art facility operators shall place cleaned instruments used in the practice of tattooing, permanent cosmetics or piercing in sterile bags, with color strip indicators, and shall sterilize the instruments by exposure to one cycle of an approved sterilizer, in accordance with the approved sterilization modes in section 28:010 of this chapter.

28:009-2. The provisions of this chapter shall not apply to electrical instruments.

28:010. Approved Sterilization Modes

28:010-1. Instruments used in the practice of commercial body art services shall be sterilized, using one of the following methods:

- a. In a steam or chemical autoclave sterilizer, registered and listed with the Federal Food and Drug Administration (FDA), and used, cleaned, and maintained according to manufacturer's directions; or
- b. With single-use, prepackaged, sterilized equipment obtained from reputable suppliers or manufacturers.

28:010-2. Facility registrants and operators shall sterilize all piercing instruments that have or may come in direct contact with a client's skin or be exposed to blood or body fluids. Piercing needles shall not be reused. All piercing needles shall be single use.

28:010-3. All sterilizing devices shall be tested on a monthly basis for functionality and thorough sterilization by use of the following means:

- a. Chemical indicators that change color, to assure sufficient temperature and proper functioning of equipment during the sterilization cycle; and
- b. A biological monitoring system using commercially prepared spores, to assure that all microorganisms have been destroyed and sterilization has been achieved. This testing shall be performed on a monthly basis for tattoo and body piercing facilities.

28:010-4. Sterilization device test results shall be made available at the facility at all times for inspection by the state health officer for a minimum of three years.

28:011. Waste Receptacles

28:011-1. Following body art procedures for each client, the registrant or operator shall deposit all waste material related to treatment in a container of the type specified in Section 28:011-3 of this Chapter.

28:011-2. Waste disposed in a reception area and restrooms shall be limited only to materials that are not used in providing body art services to clients or are practice related.

28:011-3. Waste disposal containers shall be constructed of non-absorbent and readily cleanable materials, shall have smooth surfaces and shall be kept clean and in good repair.

28:01. Linens

28:012-1. Each registrant or operator shall use clean reusable linens or disposable linens for each client.

28:012-2. A common towel shall be prohibited.

28:012-3. Air blowers may be substituted for hand towels.

28:012-4. Each registrant or operator shall store clean linens, tissues, or single-use paper products in a clean, enclosed storage area until needed for immediate use.

28:012-5. Each registrant or operator shall dispose of or store used linens in a closed or covered container until laundered.

28:012-6. Each registrant or operator shall launder used linens either by a regular, commercial laundering or by a noncommercial laundering process that includes immersion in water at 160 degrees Fahrenheit for not less than 15 minutes during the washing and rinsing operations.

28:013. Clean Instruments and Products Storage

28:013-1. Before use, disposable products that come in contact with the areas to be treated shall be stored in clean containers that can be closed between treatments.

28:013-2. Clean, sterilized reusable instruments that come in contact with the areas to be treated shall be packed in self-sealing sterilization packages and stored in clean, dry covered containers.

28:013-3. Clean, sterilized reusable transfer instruments, including forceps, trays, and tweezers, shall be packed in self-sealing sterilization packages and stored in clean, dry covered containers.

28:014. Chemical Storage

28:014-1. Each registrant or operator shall store chemicals in labeled, closed containers in an enclosed storage area. All bottles containing poisonous or caustic substances shall be additionally and distinctly marked as such and shall be stored in an area not open to the public.

28:015. Handling Disposable Materials

28:015-1. All potentially infectious waste materials shall be handled, stored and disposed of in a manner specified in Chapter 27 of the State Sanitary Code.

28:015-2. Each registrant or operator shall dispose of disposable materials coming into contact with blood, body fluids, or both, in a sealable plastic bag that is separate from sealable trash or garbage liners or in a manner that protects not only the registrant or operators and the client, but also others who may come into contact with the material, including sanitation workers. Waste materials shall be kept secured from public access. Waste dumpsters shall be kept locked.

28:015-3. Disposable, sharp objects that come in contact with blood or body fluids shall be disposed of in a sealable, rigid, puncture-proof container that is strong enough to protect the registrant or operators, clients, and others from accidental cuts or puncture wounds that could happen during the disposal process.

28:015-4. Registrants or operators shall have both sealable plastic bags or sealable rigid containers available at the facility.

28:015-5. Each registrant or operator shall follow universal precautions in all cases.

28:016. Tattoo and Permanent Cosmetic Procedures; Preparation and Aftercare

28:016-1. During preparation, performance of service, and aftercare phases all substances shall be dispensed from containers in a manner to prevent contamination of the unused portion. Use of a covered spray bottle to apply liquid to skin is acceptable and will enhance the prevention of cross-contamination. Single use tubes or containers and applicators shall be discarded following tattoo service.

28:016-2. The client's skin shall be cleansed, excluding the areas surrounding the eyes, by washing with a Food and Drug Administration (FDA) compliant antiseptic solution applied with a clean single-use paper product before placing the design on the client's skin or beginning tattooing work.

28:016-3. If the area is to be shaved, the operator shall use a single use disposable safety razor and then rewash client's skin.

28:016-4. Substances applied to client's skin to transfer design from stencil or paper shall be single use. Paper stencils and skin scribes shall be single-use and disposed of immediately following service.

28:016-5. Body pencils used during a tattoo and permanent cosmetic service shall have the tip removed, the body and tip of the pen disinfected, and the tip sharpened to remove exposed edge after use on a client and prior to use on another client.

28:016-6. The plastic or acetate stencil used to transfer the design to the client's skin shall be thoroughly cleansed and rinsed in an Environmental Protection Agency (EPA) approved high-level disinfectant according to the manufacturer's instructions and then dried with a clean single-use paper product.

28:016-7. Individual portions of inks, dyes, or pigments dispensed from containers or bottles into single-use containers shall be used for each client. Any remaining unused ink, dye or pigments shall be discarded immediately following service and shall not be re-used on another client.

28:016-8. Excess ink, dye, or pigment applied to the client's skin shall be removed with clean single-use paper product.

28:016-9. Use of styptic pencils or alum solids to check any blood flow is prohibited.

28:016-10. Upon completion of tattooing, the operator shall cleanse the skin, excluding the area surrounding the eyes, with a clean, single-use paper product saturated with an EPA-approved antiseptic solution.

28:016-11. A sanitary covering shall be placed over designs and adhered to the skin with suitable medical skin tape.

28:016-12. Each operator shall provide aftercare, which shall consist of both verbal and written instructions concerning proper care of the tattooed skin. Instructions shall specify the following information:

- a. care following the procedure;
- b. advise clients to contact the body art operator or a qualified health care professional at the first sign of abnormal inflammation, swelling or possible infection; and
- c. restrictions.

28:017. Body Piercing Procedures

Body piercing operators shall be responsible for adhering to the following standards while serving clients in the commercial body art facility.

28:017-1. Each operator shall observe and follow thorough hand washing procedures with soap and water or an equivalent hand washing product before and after serving each client and as needed to prevent cross contamination or transmission of body fluids, infections or exposure to service-related wastes or chemicals.

28:017-2. Each operator shall cleanse the client's skin, excluding the areas surrounding the eyes, by washing it with an FDA registered antiseptic solution applied with a clean, single-use paper product before and after piercing the client's skin.

28:017-3. All substances shall be dispensed from containers in a manner to prevent contamination of the unused portion. Single use swabs, applicators, lubricants, cups, skin scribes or marking instruments shall be discarded following the piercing service.

28:017-4. Any type of marking pen used by the operator shall be applied on cleansed skin only or shall be a surgical marking pen sanitized by design, including alcohol-based ink pens. The operator shall remove the tip of each body pencil used during a piercing, shall disinfect the body and the tip of the pencil, and shall sharpen the tip to remove the exposed edge prior to disinfection.

28:017-5. Use of styptic pencils or alum solids to control blood flow shall be prohibited.

28:017-6. Aftercare shall be administered to each client following service. Aftercare shall consist of both verbal and written instructions concerning proper care of the pierced area. Instructions shall specify the following information:

- a. care following service;
- b. advise clients to contact the body art operator or a qualified health care professional at the first sign of abnormal inflammation, swelling or possible infection; and
- c. restrictions.

28:017-7. Operators who have open sores or bleeding lesions on their hands shall not have client contact until the lesions have healed to the scab phase. Each operator shall cover them with protective gloves or impervious bandages prior to contact with clients.

28:017-8. Operators shall wear eye goggles, shields, or masks if spattering is likely to occur while providing services.

28:018. Registration

28:018-1. Each person owning or operating a commercial body art facility or facilities within the State of Louisiana on January 1, 2000 shall register each facility with the department no later than March 1, 2000.

28:018-2. Each person acquiring or establishing a commercial body art facility within the State of Louisiana after January 1, 2000, shall register the facility with the department prior to beginning operation of such a facility.

28:018-3. No person shall operate a commercial body art facility without first having registered that facility as provided by Subsections 28:018-1 and 28:018-2 of this section. The application for registration of commercial body art facilities shall be submitted on forms provided by the department and shall contain all the information required by such forms and any accompanying instructions.

28:018-4. Each person managing a commercial body art facility and each person acting as an operator as defined in Section 28:001 of this Chapter on January 1, 2000, shall register with the department no later than March 1, 2000.

28:018-5. Each person who begins to act as a manager or operator in a commercial body art facility after January 1, 2000, shall register the facility as required in this Chapter prior to beginning operation of such a facility.

28:018-6. No person shall act as a manager or operator in a commercial body art facility without having first registered as provided in Subsections 28:018-4 and 28:018-5 of this section. The applications for registration shall be submitted on forms provided by the department and shall contain all of the information required by such forms and any accompanying instructions.

28:018-7. Any person or facility approved by the department for training commercial body art operators pursuant to R.S. 37:2743(A)(4) shall register with the department upon approval. The applications for registration shall be submitted on forms provided by the department and shall contain all of the information required by such forms and any accompanying instructions.

28:018-8. As part of the application for registration process, owners of commercial body art facilities shall submit a scale drawing and floor plan of the proposed establishment to the department for a review. This shall apply to new construction and to renovation of any existing property.

28:019. Registration Application Form

28:019-1. The department shall require at least the following information for registration:

a. name, physical address, mailing address and telephone number and normal business hours of each commercial body art facility;

b. name, residence address, mailing address and telephone number of the owner of each commercial body art facility;

c. for each manager or operator: name, residence address, mailing address, telephone number, place(s) of employment as a manger or operator, training and/or experience, proof of attendance of an approved operator training course as specified in Section 28:005 of this Chapter;

d. name, mailing address, telephone number and owner, manager or contact person for each operator training facility.

28:020. Registration Fees

28:020-1. The following fees shall accompany each application for initial registration:

| Registrant | Fee |
|-----------------------------|------------|
| Owner of facility | \$1,000.00 |
| Manager of facility | \$200.00 |
| Operator | \$100.00 |
| Training Facility or Person | \$3,000.00 |

Make check or money orders payable to the Department of Health and Hospitals.

28:021. Issuance of Certificate of Registration

28:021-1. A certificate of registration shall be issued upon receipt of an application and the required registration fee provided that no certificate of registration will be issued until an inspection has been made of the commercial body art facility and it has been found to be operating in compliance with the provisions of R.S. 40:2831 through 40:2834 and the provisions of this Chapter of the Sanitary Code.

28:021-2. Certificates of registration shall be displayed in an open public area of the commercial body art facility.

28:021-3. Certificates of registration shall expire annually on December 31.

28:021-4. Certificates of registration shall be issued only to the applicants and shall not be transferable.

28:022. Renewal of Certificate of Registration

28:022-1. Each registrant shall file applications for renewal of certificate of registration annually on forms provided by the department. The renewal application shall be forwarded to the mailing address of the registrant as listed on the last application for registration submitted to the department.

28:022-2. The following fees shall accompany each application for registration renewal:

| Registrant | Renewal Fee |
|-----------------------------|-------------|
| Owner of facility | \$500.00 |
| Manager of facility | \$150.00 |
| Operator | \$60.00 |
| Training Facility or Person | \$1,000.00 |

Make check or money orders payable to the Department of Health and Hospitals.

28:022-3. Provided that a registrant files a required application with the department in proper form not less than 30 days prior to the expiration date stated on the certificate of registration, the certificate shall not expire pending final action on the application by the department.

28:023. Temporary Commercial Body Art Facility/Operator Registration

28:023-1. Temporary commercial body art facilities and, when required, operator registrations may be issued for body art services provided outside of the physical site of a registered permanent facility for the purposes of product demonstration, industry trade shows or for educational reasons.

28:023-2. Temporary commercial body art facility and/or operator registrations will not be issued unless:

a. the applicant furnishes proof of compliance with Section 28:018 of this Chapter relating to operator's registration;

b. the applicant is currently affiliated with a permanent fixed location or permanent facility which, is registered by the department;

c. applicants who reside outside of Louisiana must demonstrate to the department that they hold a valid registration or license to operate a commercial body art facility at a permanent fixed location issued by the state or local regulatory authority within their respective state;

d. the temporary site complies with Section 28:025 of this Chapter.

28:023-3. In lieu of attendance at a bloodborne pathogens training program approved by the department within the past year as specified in Section 28:005 of this Chapter, the applicant may furnish proof of attendance at equivalent training which is acceptable to the Department.

28:023-4. Temporary registrations expire after 14 consecutive calendar days or at the conclusion of the special event, whichever is less.

28:023-5. Temporary commercial body art facility and/or operator registrations will not be issued unless the applicant has paid a reasonable fee as set by the department.

28:023-6. The temporary commercial body art facility and/or operator registration(s) shall not be transferable from one place or person to another.

28:023-7. The temporary commercial body art facility and/or operator registrations shall be posted in a prominent and conspicuous area where they may be readily seen by clients.

28:024. Temporary commercial body art facility/operator registration requirements

28:024-1. A temporary registration may be issued by the Department for educational, trade show or product demonstration purposes only. The registration may not exceed 14 calendar days.

28:024-2. A person who wishes to obtain a temporary demonstration registration must submit the request in writing for review by the Department, at least thirty (30) days prior to the event. The request should specify:

- a. The purpose for which the registration is requested.
- b. The period of time during which the registration is needed (not to exceed 14 consecutive calendar days per event), without re-application;
- c. The fulfillment of operator requirements as specified in Section 28:005 of this Chapter;
- d. The location where the temporary demonstration registration will be used;

28:024-3. The applicant's demonstration project must be contained in a completely enclosed, non-mobile facility (e.g. inside a permanent building).

28:024-4. Compliance with all of the requirements of this Code, including but not limited to:

- a. Conveniently located handwashing facilities with liquid soap, paper towels and hot and cold water under adequate pressure shall be provided. Drainage in accordance with local plumbing codes is to be provided. Antiseptic single use hand wipes, approved by the Department, to augment the handwashing requirements of this section must be made readily available to each operator;
- b. A minimum of 80 square feet of floor space;
- c. At least 100 foot candles of light at the level where the body art procedure is being performed;
- d. Facilities to properly sterilize instruments - evidence of spore test performed on sterilization equipment thirty (30) days or less prior to the date of the event, must be provided; or only single use, prepackaged, sterilized equipment obtained from reputable suppliers or manufacturers will be allowed;
- e. Ability to properly clean and sanitize the area used for body art procedures.

28:024-5. The facility where the temporary demonstration registration is needed must be inspected by the Department and a certificate of registration issued prior to any body art procedures being performed.

28:024-6. Temporary demonstration registrations issued under the provisions of Section 28:024-5 of this Chapter may be suspended by the Department for failure of the holder to comply with the requirements of this Chapter.

28:024-7. All temporary demonstration registrations and the disclosure notice must be readily seen by clients.

28:025. Report of Changes

28:025-1. The registrant shall notify the department in writing before making any change which would render the information contained in the application for registration inaccurate. Notification of changes shall include information required Section 28:018 of this Chapter.

28:026. Transfer of Registrations

28:026-1. Certificates of registration issued to commercial body art facilities, facility managers, body art operators and operator trainers shall not be transferrable.

28:027. Enforcement

28:027-1. The Office of Public Health shall enforce the provisions of this Chapter in accordance with Chapter I of this Code.

28:028. Facility Inspections

28:028-1. The department shall conduct at least one inspection of a commercial body art facility prior to

approving the business to offer body art application services under provisions of this Chapter and R.S. 40:2831 through 2834. The department may conduct additional inspections as necessary for the approval process, and may inspect a registered commercial body art facility at any time the department considers necessary.

28:028-2. In an inspection, the department shall be given access to the business=premises and to all records relevant to the inspection.

28:029. Suspension or Revocation of Approval

28:029-1. The department may suspend or revoke the approval and registration of a commercial body art facility at any time the department determines that the business is being operated in violation of the provisions of R.S. 40:2831 through 2834, or the provisions of R.S. 14:93.2, which prohibits the tattooing and body piercing of minors without parental or custodial consent.

28:029-2. In addition to suspension or revocation of approval and registration by the department, if a commercial body art facility violates the provisions of R.S. 14:93.2, it shall be subject to the penalties provided therein.

28:029-3. The department may suspend or revoke the registration of a manager or operator at a commercial body art facility or the registration of a registered training facility at any time the department determines that the registrant is operating in violation of the provisions of R.S. 40:2831 through 2834 or the provisions of R.S. 14:93.

28:029-4. In addition to suspension or revocation of registration by the department, a registrant who violates the provisions of R.S. 14:93.2 shall be subject to the penalties provided therein.

28:029-5. The department may suspend or revoke the approval and registration of a commercial body art facility for any of the following reasons:

- a. failure to pay a registration fee or an annual registration renewal fee;
- b. the applicant obtained or attempted to obtain an approval or registration by fraud or deception;
- c. a violation of any of the provisions of this Chapter of the State Sanitary Code.

28:030. Injunctive Relief

28:030-1. If the department or state health officer finds that a person has violated, is violating, or threatening to violate the provisions of R.S. 40:2831 through 2834 or the provisions of this Chapter of the Sanitary Code and that violation or threat of violation creates an immediate threat to the health and safety of the public, the department or state health officer may petition the district court for a temporary restraining order to restrain the violation or threat of violation. If a person has violated, is violating, or threatening to violate provisions of R.S. 40:2831 through 2834 or the provisions of this Chapter of the Sanitary Code, the department or state health officer may, after sending notice of said alleged violation to the alleged violator via certified mail and the lapse of ten days following receipt of the notice by the alleged violator may petition the district court for an injunction to prohibit the person from continuing the violation or threat of violation.

28:030-2. On application for injunctive relief and a finding that a person is violating or threatening to violate provisions of R.S. 40:2831 through 2834 or the provisions of this Chapter of the Sanitary Code, the district court may grant

any injunctive relief warranted by the facts. Venue for a suit brought under provisions of this section shall be in the parish in which the violation is alleged to have occurred.

28:031. Severability

See State Sanitary Code, Chapter 1, Section 1:006.

* * *

AUTHORITY NOTE: Promulgated under authority of R.S. 40:2831 through R.S. 40:2834, Commercial Body Art Regulation Act; R.S. 40:4; R.S. 40:5.

HISTORICAL NOTE: Promulgated by Department of Health and Hospitals, Office of Public Health, LR 10:210 (March 1984), amended LR 26:1624 (August 2000).

David W. Hood
Secretary

0008#091

RULE

**Department of Health and Hospitals
Office of Public Health**

Sanitary CodeCWater Supplies (Chapter XII)

Under the authority of R.S. 40:4 and 5.9(A)(4) and in accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Department of Health and Hospitals, Office of Public Health (DHH-OPH) hereby amends Chapter XII (Water Supplies) of the Louisiana State Sanitary Code. These amendments are necessary in order that DHH-OPH may be able to maintain primacy (primary enforcement authority) from the United States Environmental Protection Agency (USEPA) over public water systems within Louisiana. USEPA requires state primacy agencies to adopt state rules and regulations which are no less stringent than the federal Safe Drinking Water Act's (42 U.S.C.A. §300f, et seq.) primary implementing regulations (40 CFR Part 141).

The first amendment is specifically necessary due to a federal rule promulgated by USEPA in the *Federal Register* dated August 19, 1998 (Volume 63, Number 160, pages 44526 through 44536), which is entitled "National Primary Drinking Water Regulations: Consumer Confidence Reports; Final Rule". This federal rule was promulgated under the authority of the federal Safe Drinking Water Act Amendments of 1996 (Pub.L. 104-182 dated August 6, 1996). The reason for this amendment to Chapter XII (Water Supplies) of the Louisiana State Sanitary Code is to adopt an equivalent state rule which will require all community water systems [public water systems (PWSs) which provide water to year-round residents, such as systems serving subdivisions, mobile home parks, municipalities, etc.] to provide to their consumers an annual report on the quality of the drinking water supplied to them. This report is termed the annual Consumer Confidence Report. DHH-OPH adopts this rule by reference.

The second amendment is due to a federal rule promulgated by USEPA in the *Federal Register* dated August 14, 1998 (Volume 63, Number 157, pages 43846 through 43851), which is entitled "Revision of Existing Variance and Exemption Regulations To Comply With Requirements of the Safe Drinking Water Act; Final Rule".

This federal rule was also promulgated under the authority of the federal Safe Drinking Water Act Amendments of 1996 (Pub.L. 104-182 dated August 6, 1996). The reason for this amendment to Chapter XII (Water Supplies) of the Louisiana State Sanitary Code is to adopt an equivalent state rule which authorizes the State Health Officer to issue variances to small PWSs (serving less than 10,000 individuals) under USEPA's new small system variance criteria. This rule is intended to provide a mechanism for small PWSs to be able to obtain regulatory relief for some regulated contaminants under certain conditions, including, but not limited to, an affordability criterion. Variances generally allow a PWS to provide drinking water that may be above the maximum contaminant level (MCL) on the condition that the quality of the drinking water is still protective of public health. The duration of small PWS variances generally coincides with the life of the technology; however, DHH-OPH is required under federal rule to review each small PWS variance it issues at least every five years after the compliance date established in the small PWS variance itself. The review consists of whether the PWS continues to meet the eligibility criteria for such variance and is complying with the terms and conditions of the small PWS variance itself. A small PWS variance is not available for a microbial contaminant (including a bacterium, virus, or other organism) or an indicator or treatment technique for a microbial contaminant. DHH-OPH also adopts this rule by reference.

The Consumer Confidence Report portion of the rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972; however, in accordance with R.S. 49:972(B)(6) local governmental units may be affected if they own or operate a community water system. Local governmental units owning or operating a community water system are already subject to the requirements of the federal Consumer Confidence Report rule and were required to provide their first Consumer Confidence Report (covering calendar year 1998) to their consumers by October 19, 1999. The second annual Consumer Confidence Report (covering calendar year 1999) was required by federal rule to be provided to consumers no later than July 1, 2000. Community water systems are required to provide a Consumer Confidence Report to consumers no later than July 1 of each of the years following.

The small PWS variance portion of the rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972; however, in accordance with R.S. 49:972(B)(6) local governmental units may be positively affected if they own or operate a small PWS and become eligible for a small PWS variance. Local governmental units owning or operating a small PWS which cannot, among other criteria, afford to comply [either by treatment, alternative sources of water supply, restructuring or consolidation changes (including ownership change and /or physical consolidation with another PWS), or obtaining financial assistance pursuant to Louisiana's Drinking Water Revolving Loan Fund program or any other federal or state program] in accordance with affordability criteria established by DHH-OPH may potentially be able to obtain a small PWS variance and, in essence, obtain some

regulatory relief for some regulated contaminants. Of course, there are other criteria, unrelated to affordability, which must also be met before any small PWS variance will be granted.

For the reasons set forth above, Chapter XII (Water Supplies) of the Louisiana State Sanitary Code is amended as follows.

Title 48
HEALTH AND HOSPITALS
Chapter XII. Sanitary Code
Water Supplies

12:001 Definitions

A. Unless otherwise specifically provided herein, the following words and terms used in this Chapter of the Sanitary Code, and all other Chapters which are adopted or may be adopted, are defined for the purposes thereof as follows:

* * *

National Primary Drinking Water Regulations Regulations promulgated by the U.S. Environmental Protection Agency pursuant to applicable provisions of title XIV of the Public Health Service Act, commonly known as the "Safe Drinking Water Act," 42 U.S.C.A. §300f, et seq., and as published in the July 1, 1999 edition of the *Code of Federal Regulations*, Title 40, Part 141 (40 CFR 141) less and except the following:

- a.) Subpart **HC** Filtration and Disinfection (40 CFR 141.70 through 40 CFR 141.75),
- b.) Subpart **LC** Disinfectant Residuals, Disinfection Byproducts, and Disinfection Byproduct Precursors (40 CFR 141.130 through 141.135),
- c.) Subpart **MC** Information Collection Requirements (ICR) for Public Water Systems (40 CFR 141.140 through 40 CFR 141.144), and
- d.) Subpart **PC** Enhanced Filtration and Disinfection (40 CFR 141.170 through 141.175).

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4, 40:5, and 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Health Services and Environmental Quality, LR 10:210 (March 1984), amended by the Department of Health and Hospitals, Office of Public Health, LR 14:630 (September 1988), LR 15:969 (November 1989), LR 17:781 (August 1991), LR 20:545 (May 1994), LR 26:1037 (May 2000), repromulgated LR 26:1275 (June 2000), amended LR 26:1625 (August 2000).

12:002-6 Upon determination that a public water supply is not in compliance with the maximum contaminant levels or treatment technique requirements of the National Primary Drinking Water Regulations, variances and/or exemptions may be issued by the State Health Officer in accordance with Sections 1415 and 1416 of the federal Safe Drinking Water Act and subpart K (Variances for Small System) of 40 CFR part 142. The owner of the public water supply which receives a variance and/or exemption shall fully and timely comply with the all the terms and conditions of any compliance and/or implementation schedule specified by the State Health Officer in conjunction with the issuance of same.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4 and 40:5.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Health Services and

Environmental Quality, LR 10:210 (March 1984), amended by the Department of Health and Hospitals, Office of Public Health, LR 14:630 (September 1988), repromulgated LR 26:1039 (May 2000), LR 26:1277 (June 2000), amended LR 26:1625 (August 2000).

David W. Hood
Secretary

0008#094

RULE

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

Durable Medical Equipment Program
Augmentative and Alternative Communication (AAC) Devices

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following Rule as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This Rule is in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing removes the age restriction for rental or purchase of augmentative and alternative communication devices for eligible recipients and expands the criteria for consideration of these devices for prior authorization under the Durable Medical Equipment Program.

I. Definitions

Augmentative and Alternative Communications (AAC) Devices Electronic or non-electronic aids, devices, or systems that assist a Medicaid recipient to overcome or ameliorate (reduce to the maximum degree possible) the communication limitations that preclude or interfere with meaningful participation in current and projected medically necessary daily activities. Examples of AAC devices include:

1. communication boards or books, speech amplifiers, and electronic devices that produce speech and/or written output;
2. devices that are constructed for use as communication devices as well as systems that may include a computer, when the primary use of the computer serves as the recipient's communication device; and
3. related components and accessories, including software programs, symbol sets, overlays, mounting devices, switches, cables and connectors, auditory, visual, and tactile output devices, printers, and necessary supplies, such as rechargeable batteries.

Meaningful Participation Effective and efficient communication of messages in any form the recipient chooses.

Speech-Language Pathologist Can individual who has:

1. been licensed by the Louisiana Board of Examiners for Speech Pathologists and Audiologists;
2. a Certificate of Clinical Competence in speech language pathology from the American Speech-Language-Hearing Association;

3. completed the equivalent educational requirements and work experience necessary for the certificate; or

4. completed the academic program and is acquiring supervised work experience to qualify for the certificate.

II. Recipient Criteria

Consideration shall be given for Medicaid reimbursement for AAC devices for Medicaid recipients if the device is considered medically necessary, the recipient has the ability to physically and mentally use a device and its accessories, and if the following criteria is met.

A. Medical Necessity Determinations

1. The following medically necessary conditions shall be established for recipients who/whom:

a. have a diagnosis of a significant expressive or receptive (language comprehension) communication impairment or disability;

b. impairment or disability either temporarily or permanently causes communication limitations that preclude or interfere with the recipient's meaningful participation in current and projected daily activities; and

c. had a speech-language pathologist (and other health professional, as appropriate):

i. perform an assessment and submit a report pursuant to the criteria set forth in sub-section B. Assessment/Evaluation; and

ii. recommend speech-language pathology treatment in the form of AAC devices and services; and

iii. document the mental and physical ability of a recipient to use, or learn to use, a recommended AAC device and accessories for effective and efficient communication; and

iv. prepare a speech-language pathology treatment plan that describes the specific components of the AAC devices and the required amount, duration, and scope of the AAC services that will overcome or ameliorate communication limitations that preclude or interfere with the recipient's meaningful participation in current and projected daily activities; and

d. requested AAC devices constitute the least costly, equally effective form of treatment that will overcome or ameliorate communication limitations that preclude or interfere with the recipient's meaningful participation in current and projected daily activities.

2. The following are additional general principles relating to medical necessity determinations for AAC devices:

a. no cognitive, language, literacy, prior treatment, or other similar prerequisites must be satisfied by a recipient in advance of a request for AAC devices;

b. the unavailability of an AAC device, component, or accessory for rental will not serve as the basis for denying a prior approval request for that device, component, or accessory;

c. the cause of the recipient's impairment or disability (e.g., congenital, developmental, or acquired), or the recipient's age at the onset of the impairment or disability, are irrelevant considerations in the determination of medical need;

d. recipient participation in other services or programs (e.g., school, early intervention services, adult services programs, employment) is irrelevant to medical necessity determination for AAC devices.

B. Assessment/Evaluation

1. An assessment, or evaluation, of the individual's functioning and communication limitations that preclude or interfere with meaningful participation in current and projected daily activities must be completed by a speech-language pathologist with input from other health professionals, (e.g., occupational therapists and rehabilitation engineers) based on the recommendation of the speech language pathologist and a physician's prescription, as appropriate.

2. Requests for AAC devices must include a description of the speech-language pathologist's qualifications, including a description of the speech-language pathologist's AAC services training and experience.

3. An assessment (augmentative and alternative communication evaluation) must include the following information about the recipient:

a. identifying information:

i. name;

ii. Medicaid identification number;

iii. date of the assessment;

iv. medical and neurological; diagnoses (primary, secondary, tertiary);

v. significant medical history;

vi. mental or cognitive status; and

vii. educational level and goals;

b. sensory status:

i. vision and hearing screening (no more than one year prior to AAC evaluation);

ii. if vision screening is failed, a complete vision evaluation;

iii. if hearing screening is failed, a complete hearing evaluation;

iv. description of how vision, hearing, tactile, and/or receptive communication impairments or disabilities affect expressive communication;

c. postural, mobility, and motor status:

i. gross motor assessment;

ii. fine motor assessment;

iii. optimal positioning;

iv. integration of mobility with AAC devices;

v. recipient's access methods (and options) for AAC devices;

d. current speech, language, and expressive communication status:

i. identification and description of the recipient's expressive or receptive (language comprehension) communication impairment diagnosis;

ii. speech skills and prognosis;

iii. language skills and prognosis;

iv. communication behaviors and interaction skills (i.e., styles and patterns);

v. functional communication assessment, including ecological inventory;

vi. indication of past treatment, if any;

vii. description of current communication strategies, including use of an AAC device, if any;

Note: If an AAC device is currently used, describe the device, when and by whom it was previously purchased, and why it is no longer adequate to meet the recipient's communication needs.

e. communication needs inventory:

- i. description of recipient's current and projected communication needs;
- ii. communication partners and tasks including partners' communication abilities limitations, if any; and
- iii. communication environments and constraints which affect AAC device selection and/or features (e.g., verbal and/or visual output and/or feedback; distance communication needs);
- f. summary of Communication Limitations. Description of the communication limitations that preclude or interfere with meaningful participation in current and projected daily activities (i.e., why the recipient's current communication skills and behaviors prevent meaningful participation in the recipient's current and projected daily activities);
- g. AAC devices assessment components:
 - i. vocabulary requirements;
 - ii. representational system(s);
 - iii. display organization and features;
 - iv. rate enhancement techniques;
 - v. message characteristics, speech synthesis, printed output, display characteristics, feedback, auditory and visual output;
 - vi. access techniques and strategies; and
 - vii. portability and durability concerns, if any.
- h. identification of AAC devices considered for recipients:
 - i. identification of the significant characteristics and features of the AAC devices considered for the recipient; and
 - ii. identification of the cost of the AAC devices considered for the recipient (including all required components, accessories, peripherals, and supplies, as appropriate);
- i. AAC device recommendation:
 - i. identification of the requested AAC devices including all required components, accessories, software, peripheral devices, supplies, and the device vendor;
 - ii. identification of the recipient's and communication partner's AAC devices preference, if any;
 - iii. assessment of the recipient's ability (physically and mentally) to use, or to learn to use, the recommended AAC device and accessories for effective and efficient communication;
 - iv. justification stating why the recommended AAC device (including description of the significant characteristics, features, and accessories) is better able to overcome or ameliorate the communication limitations that preclude or interfere with the recipient's meaningful participation in current and projected daily activities, as compared to the other AAC devices considered;
 - v. justification stating why the recommended AAC device (including description of the significant characteristics, features, and accessories) is the least costly, equally effective, alternative form of treatment to overcome or ameliorate the communication limitations that preclude or interfere with the recipient's meaningful participation in current and projected daily activities;
- j. treatment plan and follow-up:
 - i. description of short term communication goals (e.g., 6 months);

- ii. description of long term communication goals (e.g., 1 year);
- iii. assessment criteria to measure recipient's progress toward achieving short and long term communication goals;
- iv. description of amount, duration, and scope of AAC services required for the recipient to achieve short and long term communication goals; and
- v. identification and experience of AAC service provider responsible for training (these service providers may include, e.g.: speech-language pathologists, occupational therapists, rehabilitation engineers, the recipient's parents, teachers and other service providers);
- k. summary of alternative funding source for AAC device:
 - i. description of availability or lack of availability, of purchase of AAC device through other funding sources.

C. Trial Use Periods

1. In instances where the appropriateness of a specific AAC device is not clear, a trial use period for an AAC device may be recommended (although it is not required) by the speech-language pathologist who conducts the AAC evaluation.
2. Prior authorization for rental of AAC devices shall be approved for trial use periods when the speech-language pathologist prepares a request consistent with the established requirements. The reasons for a trial use period request include, but are not limited to:
 - a. the characteristics of the recipient's communication limitations;
 - b. lack of familiarity with a specific AAC device; and
 - c. whether there are sufficient AAC services to support the recipient's use of the AAC device, or other factors.
3. If the speech-language pathologist recommends a trial use period, the pathologist must prepare a request that includes the following information:
 - a. the duration of the trial period;
 - b. the speech-language pathologist information and the recipient information as required in B. Assessment/Evaluation;
 - c. the AAC device to be examined during the trial period, including all the necessary components (e.g., mounting device, software, switches, or access control mechanism);
 - d. the identification of the AAC service provider(s) who will assist the recipient during the trial period;
 - e. the identification of the AAC services provider(s) who will assess the trial period; and
 - f. the evaluation criteria, specific to the recipient, that will be used to determine the success or failure of the trial period.
4. Trial use period requests must request Medicaid funding for the rental of all necessary components and accessories of the AAC device. If an accessory necessary for the trial use of a device by a recipient is not available for rental, but the communication device is available for rental for trial use, Medicaid may consider the purchase of the accessory for the trial use of the communication device by that recipient.

5. Trial periods may be extended and/or different AAC devices provided, when requested by the speech-language pathologist responsible for evaluating the trial use period.

6. Results of trial use periods must be included with any subsequent request for prior authorization of purchase of the AAC device. Recommendations for the purchase of an AAC device, as a result of a trial use period of the device, must clearly indicate the patient's ability to use the device during the trial period.

D. Repairs

1. Medicaid will cover repairs to keep AAC devices, accessories, and other system components in working condition. Medicaid coverage for repairs will include the cost of parts, labor, and shipping, when not otherwise available without charge pursuant to a manufacturer's warranty.

a. Providers of AAC devices are expected to comply with the Louisiana New Assistive Devices Warranty Act.

i. One of the provisions of this law is that all persons who make, sell, or lease assistive devices, including AAC devices, must provide those who buy or lease the equipment with a warranty which lasts at least one year from the time the equipment is delivered to the customer.

ii. If, during the warranty period, the equipment does not work, the manufacturer or dealer must make an attempt to repair the equipment.

b. Medicaid additionally requires providers to provide the recipient with a comparable, alternate AAC device while repairing the recipient's device during a warranty period.

c. Medicaid coverage may be provided for rental of an alternate AAC device during a repair period after expiration of the warranty.

d. Medicaid will not cover repairs, or rental of a loaner device, when repairs are made during a warranty period.

2. When a device is received by the provider for the purpose of repair, the provider will conduct an assessment of the device to determine whether it can be repaired, and if so, prepare a written estimate of the parts, labor, and total cost of the repair, as well as the effectiveness (i.e., estimated durability) of the repair. If the manufacturer or provider concludes that the device is not repairable and a replacement device is needed, written notice will be provided to the recipient.

3. Medicaid coverage for repairs greater than \$300.00 must be accompanied by a statement from the speech-language pathologist. The statement must indicate:

a. whether there have been any significant changes in the sensory status (e.g., vision, hearing, tactile); postural, mobility or motor status; speech, language, and expressive communication status; or any other communication need or limitation of the recipient as described in [B.2. (b through g, and j)]; and

b. whether the device remains the speech language pathologist's recommendation for recipient's use.

E. Replacement or Modification

1. Modification or replacement of AAC devices will be covered by Medicaid subject to the following limitations:

a. requests for modification or replacement of AAC devices and/or accessories may be considered for coverage after the expiration of three or more years from the date of purchase of the current device and accessories in use;

b. requests for modification or replacement require prior authorization and must include the recommendation of the speech-language pathologist;

c. requests for replacements of AAC devices may be submitted for identical or different devices;

d. requests for replacements of identical AAC devices must be accompanied by a statement from the provider that the current device can not be repaired or that replacement will be more cost effective than repair of the current device. Data must be provided about the following:

i. age;

ii. repair history:

(a). frequency;

(b). duration; and

(c). cost; and

iii. repair projections (estimated durability of repairs);

e. requests for modification or replacement of AAC devices with different devices must include the following additional information:

i. a significant change has occurred in the recipient's expressive communication, impairments, and/or communication limitations. Modification or replacement requests due to changed individual circumstances must be supported by a new assessment of communication limitations by a speech-language pathologist, and may be submitted at any time; or

ii. even though there has been no significant change in the recipient's communication limitations, there has been a significant change in the features or abilities of available AAC devices (i.e., a technological change) that will overcome or permit an even greater amelioration of the recipient's communication limitations as compared to the current AAC device. A detailed description of all AAC device changes and the purpose of the changes must be provided with the results of a re-evaluation by a speech-language pathologist;

f. requests for replacements of AAC devices due to loss or damage (either for identical or different devices) must include a complete explanation of the cause of the loss or damage and a plan to prevent the recurrence of the loss or damage.

III. Prior Authorization

A. All requests for AAC devices and accessories must be prior authorized by Medicaid in accordance with the criteria described in this rule.

B. Medicaid will not consider purchase of an AAC device when an alternative means of funding through another agency or other source (e.g., Louisiana Rehabilitation Services, school systems, private insurance, etc.) is available for the recipient. All requests should indicate the availability, or lack of availability, of purchase through other funding sources.

C. When the medical necessity cannot be determined for an AAC device pursuant to the criteria stated above and to the information submitted in support of a prior authorization request, the following steps shall be taken.

a. If Medicaid determines that any essential information in establishing medical necessity for the AAC device is incomplete, or has been omitted in the prior authorization request as required in Sub-section B. Assessment/Evaluation, Medicaid will make direct contact with the speech-language pathologist who conducted the assessment for the recipient. Medicaid will then identify the specific, additional information that is needed and request that the additional information be submitted; and/or

b. If Medicaid determines that an additional interpretation of information in the prior authorization request is needed by the medical reviewer in establishing medical necessity for an AAC device, Medicaid will seek the advice of speech language pathologist(s) with extensive AAC experience recommended to Medicaid by the American Speech Language & Hearing Association (ASHA), the United States Society for Augmentative and Alternative Communication (USSAAC), and/or the Rehabilitation Engineering and Assistive Technology Society of North America (RESNA), who shall provide the required interpretation.

i. Only one request for additional information by direct contact with the speech/language pathologist and/or only one interpretation will be made per prior authorization request;

ii. If additional information requested by Medicaid from the speech/language pathologist who conducted the assessment, or if an additional interpretation requested from a consulting speech-language pathologist, is not received by Medicaid within the 25 day time frame required of Medicaid for a prior authorization determination, a decision will be made by the medical reviewer for Medicaid based on the information that has been submitted with the prior authorization request and on the reviewer's interpretation of that information. If the additional information or additional interpretation is provided at a later time, another request will need to be submitted by the provider to the Prior Authorization Unit for additional review.

David W. Hood
Secretary

0008#093

RULE

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

Pharmacy Program Average Wholesale Price

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following 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.

Rule

A. The Department of Health and Hospitals, Bureau of Health Services Financing limits payments for prescription drugs to the lower of:

1. Average Wholesale Price (AWP) minus 15 percent for independent pharmacies (all other Medicaid enrolled

pharmacies) and 16.5 percent for chain pharmacies (more than 15 Medicaid enrolled pharmacies under common ownership);

2. Louisiana's maximum allowable cost limitation plus the maximum allowable overhead cost;

3. federal upper limits plus the maximum allowable overhead cost; or

4. provider's usual and customary charges to the general public. General public is defined as all other non-Medicaid prescriptions including third-party insurance, pharmacy benefit management plans and cash.

David W. Hood
Secretary

0008#092

RULE

**Department of Labor
Office of Workforce Development**

**Workforce Development Training Fund
(LAC 40:XVI.101, 105, 107, 109 and 111)**

The Department of Labor, pursuant to authority vested in the department by R.S. 23:1514 and in accordance with applicable provisions of the Administrative Procedure Act, has amended and reenacted rules governing the workforce development training account, LAC 40:XVI.101, 105, 107, 109, and 111 to provide for requirements for submission of applications, invoice reimbursement procedures, and an appeal process under the training account.

Title 40

LABOR AND EMPLOYMENT

Part XVI. Customized Training

Chapter 1. Workforce Development Training Fund

§101. Definitions

Applicant Cthe business or businesses who are members of a consortium requesting training assistance from LDOL under this program.

Contract Ca legally enforceable agreement between LDOL, the applicant and a training provider governing the terms and conditions of the training award.

Contractee Cthe applicant and training provider that are party to a training award contract with LDOL under this program.

LDOL Cthe Louisiana Department of Labor.

Monitoring Entity Cmeans a public entity contracted or selected to monitor the compliance of a contractee with the terms and conditions of a training award contract.

Account Cthe Workforce Development Training Account.

Secretary Cthe secretary of the Department of Labor.

Training Provider Cthe entity providing the customized training for the awardee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1514.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Labor, Office of Workforce Development, LR 25:1142 (June 1999), amended LR 26:1625 (August 2000).

§105. Criteria

A. Employer(s) must have been in business in the state for at least three years, contributing to the workforce

development training account, and be in full compliance with Louisiana unemployment insurance laws. In the case of a buyout or merger, LDOL will use data from the Tax Operations Unit of the Office of Regulatory Services to determine whether or not an applicant will be allowed to carry over operation time of a previous entity.

B. ...

C. No single employer or consortium shall receive training funds more than once in a 24 month time period. No single employer or consortium shall receive more than 5 percent of the total funds available to the program during a fiscal year. An employer with multiple operation sites and a single unemployment insurance tax identification number shall be limited to a single application which may encompass training at the various sites, as long as the amount awarded under the application does not exceed the maximum award amount. When an employer has more than one site and each site maintains a different unemployment insurance tax identification number, the employer may apply for a separate training award under each tax identification number.

D. - F. ...

G. Preference will be given to employers that have:

1. - 2. ...
3. hired recent recipients of public assistance such as JTPA/WIA, unemployment benefits, FITAP, and rehabilitative services;
4. hired individuals recently released from a correctional facility;
5. participated in a workplace safety consultation with employees of the Office of Workers= Compensation Administration;
6. listed job openings with LDOL;
7. never received a training award under this program.

H. Employers seeking a training award may not select as a training provider:

1. any entity whose principal owner is an immediate family member, as defined in the Code of Governmental Ethics, of an individual in a management position with the employer who has the authority to make decisions regarding the training program; or
2. any related business such as a parent, subsidiary, or partner of the employer.

I. Nothing contained herein shall prohibit the selection of a proprietary school or private institution as a training provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1514.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Labor, Office of Workforce Development, LR 25:1143 (June 1999), amended, LR 26:1630(August 2000).

§107. Application Procedure

A. LDOL will provide a standard form which applicants will use to apply for assistance. The application form will contain, but not be limited to, detailed descriptions of the following:

1. ...
2. the company's overall training plan, including:
 - a. a summary of the types and amount of training currently provided by the company and a description of how the company determined its training needs; and
 - b. the specific training programs for which LDOL assistance is requested including descriptions of the training

methods, the training providers, and the costs associated with the proposed training; and

3. any additional information the secretary may require.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1514.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workforce Development, LR 25:1143 (June 1999), amended, LR 26:1630 (August 2000).

§109. Submission and Review Procedure

A. ...

B. If any applicant is submitting an application in conjunction with a private training provider, the applicant shall also submit a cost/price/performance analysis on a form provided by LDOL at the time the application is submitted.

C. Upon determination that an application meets the eligibility criteria for this program and is deemed to be beneficial to the well-being of the state, LDOL staff will then make a recommendation to the secretary of the Department of Labor. The application will then be reviewed and approved by the following entities in the following order:

1. the secretary of the Department of Labor;
2. the governor.

A copy of the application shall be sent to the executive director of the Louisiana Workforce Commission. No funds spent on the project prior to the secretary's approval will be considered eligible project costs.

The secretary will issue a Letter of Commitment to the applicant within five working days of the application approval by the governor.

If any application is rejected by any of the preceding entities, the application shall not be considered by the next succeeding entity unless first reconsidered and approved by the entity which initially rejected the application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1514.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Labor, Office of Workforce Development, LR 25:1143 (June 1999), amended, LR 26:1630 (August 2000).

§111. General Award Provisions

A. Award Contract

1. A contract will be executed between LDOL, the applicant (and/or company(ies) receiving training) and the training provider. The contract will specify the performance objectives expected of the company(ies) and the training provider and the compliance requirements to be enforced in exchange for state assistance, including, but not limited to, time lines for job training.

2. - 3. ...

4. The cost associated with the contract between the monitoring entity and the applicant will be considered part of the total training award, but will not exceed 5 percent of the award amount or \$10,000, whichever is less.

5. ...

B. Use of Funds

1. ...

2. Eligible training costs may include, inter alia, the following:

- a. instruction costs: wages for instructors and training coordinators employed by the applicant or training provider, Louisiana public and/or private school tuition, contracts for vendor trainers, training seminars;

b. travel costs (limited to 30 percent of the total training award): travel for trainers and training coordinators (company and training provider), and travel for trainees; travel expenses reimbursable under this agreement will comply with State Travel Regulations, PPM 49;

c. ...

d. other costs: facility rental associated with the training contract and fees or service costs incurred by the monitoring entity associated with the contract to monitor the training.

3. Training costs ineligible for reimbursement include:

a. ...

b. non-consumable tangible property (e.g., equipment, calculators, furniture, classroom fixtures, non-Computer Based Training (CBT) software), unless such property will be owned by a public training provider at the conclusion of the training contract;

c. out-of-state, publicly supported and private schools;

d. - g. ...

C. Conditions for Disbursement of Funds

1. Funds will be available on a reimbursement basis following submission of original invoices to LDOL to the attention of the Incumbent Worker Training Program Manager, Office of Workforce Development by mail or hand delivery. Only funds spent on the project after the secretary's approval will be considered eligible for reimbursement. LDOL shall make a determination regarding an invoice within 15 working days after receipt of the invoice and will make payment within 15 working days of approval of said invoice. Certain invoices that need priority attention shall be clearly marked "priority" and LDOL shall make a good faith effort to expedite the processing of such invoices. Invoices regarding the purchase of equipment must be accompanied by documentation confirming delivery.

2. Invoices will be eligible for reimbursement at 100 percent of the total invoice amount until the sum of disbursements under a contract are equal to 90 percent of the total grant award. After the applicant and the training provider have achieved 100 percent of their contracted performance objectives or have substantially complied with the terms of the contract as determined by the secretary, the remaining 10 percent of the grant award will be made available for reimbursement.

3. ...

D. Compliance Requirements

1. Training Providers shall be required to complete quarterly reports describing progress toward the performance objectives specified in their contract with LDOL. Training providers shall also be responsible for providing documentation to LDOL on a quarterly basis regarding the satisfaction of the business receiving training under the contract.

2. In the event the applicant or training provider fails to meet its performance objectives specified in its contract with LDOL, LDOL shall retain the rights to withhold award funds, modify the terms and conditions of the award, and to reclaim disbursed funds from the applicant and/or training provider in an amount commensurate with the scope of the unmet performance objectives and the foregone benefits to the state.

3. In the event LDOL decides to withhold award funds, modify the terms and conditions of an award, or reclaim disbursed funds from the applicant and/or training provider, LDOL shall provide notice of such determination to the applicant and training provider within three working days of such decision.

a. The applicant or training provider may appeal an adverse decision made by LDOL by providing written notice of objection to the secretary within five working days of receipt of the adverse decision. If a request for an appeal is made, then the appellant shall submit documentation to support the appeal within ten working days after forwarding notice of the appeal. The secretary shall review the evidence submitted and render a written decision within twenty working days after receiving notice of the appeal. If no appeal is filed within the applicable time period, the decision of LDOL shall become final.

b. If after review of the appeal, the secretary renders a decision that is adverse to the appellant, then the matter shall be submitted to the Office of the Governor for resolution.

4. In the event the applicant or monitoring entity knowingly files a false statement in its application or in a progress report, the applicant or monitoring entity shall be guilty of the offense of filing false public records and shall be subject to the penalty provided for in R.S. 14:133.

5. LDOL shall retain the right to require and/or conduct financial and performance audits of a project, including all relevant records and documents of the applicant and the monitoring entity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1514.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Labor, Office of Workforce Development, LR 25:1143 (June 1999), amended, LR 26:1631 (August 2000).

Garey Forster
Secretary

0008#045

RULE

Louisiana Lottery Corporation

On-Line Lottery Games
(LAC 42:XV.Chapter 1)

The Louisiana Lottery Corporation in compliance with, and under authority of R.S. 49:950 et seq., and R.S. 47:9001 et seq., has amended the rules and regulations pertaining to the operations of on-line lottery games in particular LAC 42:XV.141 to allow the Louisiana Lottery Corporation to offer the Multi-State Lottery Association on-line game "Rolldown."

Title 42

LOUISIANA GAMING

Part XV. LOTTERY

Chapter 1. On Line Lottery Games

§141. Multi-State Lottery

A. This section authorizes the Louisiana Lottery Corporation, through an agreement with the Multi-State Lottery Association (MUSL), to offer the following games: "PowerBall,@ "Daily Millions," and "Rolldown."

Introduction of any new game conducted by MUSL may only be accomplished by amendment of this Section to include the game as an authorized game. The detailed information regarding the Rules of the PowerBall game, the Daily Millions game, and the Rolldown game will be contained in a game directive promulgated by the president. The game directive must be signed by the president prior to the start of the game. The game directive will be distributed and posted at every corporation office and will be available for public inspection during the sales period of PowerBall, Daily Millions, and Rolldown.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation on October 21, 1994, and promulgated in *THE ADVOCATE*, October 28, 1994, amended LR 23:67 (January, 1997), amended LR 26:1632 (August 2000).

Charles R. Davis
President

0008#026

RULE

**Department of Public Safety and Corrections
Office of Motor Vehicles**

**Driver's LicenseCGeneral Requirements
(LAC 55:III.118, 135, 138, and 141)**

Pursuant to the authority contained in R.S. 32:408.1 and R.S. 32:412, and in accordance with the Administrative Procedure Act, the Department of Public Safety and Corrections, Office of Motor Vehicles amends LAC 55, Part III, Chapter 1, Subchapter A, §118, regarding third-party tester agreements, and adopts §135, and to repeal §139 and §141 regarding the renewal of driver's license by electronic commerce.

The amendment to §118 resolves a technical issue that was raised in current litigation. The enactment of §135 and the repeal of §139 and §141 are required as a result of the passage of Act No. 6 of the 2000 Special Session which amended R.S. 32:412.

Title 55

PUBLIC SAFETY

Part III. Motor Vehicles

Chapter1. Driver's License

Subchapter A. General Requirements

§118. Administrative Actions

A. The department may suspend, revoke or cancel any certification, agreement, license, or permit granting the status of a third-party tester or third-party examiner for any violation of R.S. 32:401 et seq., LAC 55, Part III, Chapter 1, or the agreement signed by the third-party tester or third party examiner. Additionally, the department may impose a fine or other sanction for violation of R.S. 32:401 et seq., or LAC 55, Part III, Chapter 1, or the agreement signed by the third party examiner or third party tester.

B. The department shall deny any application, including any renewal application, for an agreement and a certification, as a third-party tester or third-party examiner if the applicant does not possess the qualification contained in R.S. 32:408.1 and LAC 55, Part III, Chapter 1. The

department may also deny any renewal application if the department determines that the applicant has not administered skills test in accordance with the law and the agreement between the parties.

C. Any request for an administrative hearing to review the suspension, revocation or cancellation of any certification, license, or permit issued pursuant to R.S. 32:408.1 or LAC 55, Part III, Chapter 1, any other action, order or decision of the department regarding a third-party tester or a third-party examiner shall be in writing and received by the department within 30 days of the date the notice was mailed or hand delivered as the case may be.

D. Since the agreement between the parties is subject to contract law, and is not an order or decision for purposes of administrative law, no administrative hearing shall be granted in connection with the denial of an application for a new or renewal application to be certified as a third-party tester or third party examiner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:408.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 24:2315 (December 1998), amended LR 26:1632 (August 2000).

§135. Renewal by Electronic Commerce

A. In addition to renewing a class "D" or "E" driver's license by mail, an individual who has received an invitation to renew pursuant to LAC 55, Part, III, Chapter 1, §129 may choose to renew his or her driver's license by contacting the Department via the Internet or by telephone.

B. Prior to initiating the renewal process via the internet or by telephone, the individual shall be required by the department to provide information verifying the individual's identity including the individual's license number, the individual's date of birth, and the date the individual's license expires.

C. Any individual who chooses to renew his or her driver's license by electronic commerce shall be required to give express consent to any disclosure of personal information over the Internet that may be necessary in order to complete the renewal process. This consent shall be obtained by any means appropriate based upon the method chosen to renew the license.

E. Notwithstanding any other provision of LAC 55, Part III, Chapter 1 to the contrary, a class "D" or "E" driver's license which has been expired for a period of six months or less may be renewed by mail or electronic commerce upon the payment of the special late fee specified in R.S. 32:412(D)(3)(d).

F. Except as otherwise provided in §135, the rules governing renewal of class "D" or "E" driver's licenses by mail shall apply to renewals by electronic commerce.

G. All money submitted with an application to renew a class "D" or "E" driver's license by mail shall be in the form of a personal check with the applicant's name and address preprinted on the check, a money order, a cashier's check, or a certified check.

H. All fees due in connection the renewal of a class "D" or "E" driver's license by electronic commerce shall be paid using an approved credit card in accordance with applicable law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:412.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 26:1633 (August 2000).

§139. Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:412(D).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 21:183 (February 1995); repealed LR 26:1633 (August 2000).

§141. Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:412(D).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 21:184 (February 1995); repealed LR 26:1633 (August 2000).

Jerry W. Jones
Undersecretary

0008#044

RULE

**Department of Public Safety and Corrections
Office of Motor Vehicles**

Special Identification Cards (LAC 55:III.1929)

Pursuant to the authority contained in R.S. 40:1321, and in accordance with the Administrative Procedure Act, the Department of Public Safety and Corrections, Office of Motor Vehicles adopts LAC 55.III.1929, regarding the renewal of special identification card by mail or electronic commerce.

This Rule will allow any individual who has previously been issued a Louisiana special identification card the opportunity to renew the identification card by means of the U.S. mail, the internet, or the telephone. This rule making is required as a result of the passage of Act No. 7 of the 2000 Special Session which amended R.S. 40:1321.

Title 55

PUBLIC SAFETY

Part III. Motor Vehicles

Chapter 19. Special Identification Cards

§1929. Renewals

A. In addition to renewing a special identification card by mail, an individual who has received an invitation to renew pursuant to R.S. 40:1321 may choose to renew his or her special identification card by contacting the department via the internet or by telephone.

B. Prior to initiating the renewal process via the internet or by telephone, the individual shall be required by the department to provide information verifying the individual's identity including the individual's identification card number, the individual's date of birth, and the date the individual's identification card expires.

C. Any individual who chooses to renew his or her identification card by electronic commerce shall be required to give express consent to any disclosure of personal information over the Internet or telephone line that may be necessary in order to complete the renewal process. This consent shall be obtained by any means appropriate based upon the method chosen to renew the license.

D. Except as otherwise provided in §1929, the rules governing renewal of special identification cards shall apply to renewals by mail or electronic commerce.

E. All money submitted with an application to renew a special identification card by mail shall be in the form of a personal check with the applicant's name and address preprinted on the check, a money order, a cashier's check, or a certified check.

H. All fees due in connection with the renewal of a special identification card by electronic commerce shall be paid using an approved credit card in accordance with applicable law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1321.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 26:1633 (August 2000).

Jerry W. Jones
Undersecretary

0008#043

RULE

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

**Food Stamp Program C Quarterly Reporting
(LAC 67:III.2013 and 2015)**

The Department of Social Services, Office of Family Support, has amended 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).

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 12 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 26:1634 (August 2000).

J. Renea Austin-Duffin
Secretary

0008#064

RULE

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, has amended its Vocational Rehabilitation Services Policy Manual, §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.

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; 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.

2. An Impartial Hearing Officer shall be selected on a random basis or 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, including evaluations and assessment services and plan development (IPE), will continue during the fair hearing process unless the services

being 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 pursuit 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 decision of the impartial hearing officer be final unless the applicant/client or the Agency requests a review of the Impartial Hearing Officer's decision by making a written request to the Secretary of the Department of Social Services within 20 days. 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), LR 25:1266 (July 1999), LR 26:1635 (August 2000).

J. Renea Austin-Duffin
Secretary

0008#065

RULE

**Department of Social Services
Office of the Secretary
Bureau of Licensing**

Class "B" Child Day Care (LAC 48:I.Chapter 53)

The Department of Social Services, Office of the Secretary, Bureau of Licensing, has repealed §§5355-5733 and promulgated the following in Title 48, Part I, Subpart 3, Licensing and Certification.

This rule is authorized by Revised Statute 46:1401 et seq.

These standards have been revised to supersede any previous regulations heretofore published, and are effective October 1, 2000.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 53. Day Care Centers

§5355. Purpose

A. Licensing Authority

1. The Louisiana Committee on Private Child Care shall meet to develop minimum standards for licensure of Class B facilities and consult with the Department on matters pertaining to decisions to revoke or refuse to grant Class B license. The licensing authority of this committee is established by Chapter 14 of Title 46 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 46:1401 et seq., relative to the licensing and regulation of child care facilities and child placing agencies.

2. The law provides a penalty for operating a center without a valid license (see R.S. 1421). The penalty for the operation of a center without a valid license is a fine of not less than \$75 not more than \$250 for each day of operation without a license.

3. If any child care facility operates without a valid license issued by the Department, the Department may file suit in the district court in the parish in which the facility is located for injunctive relief. This injunctive order may

include a temporary restraining order to restrain the institution, society, agency, corporation, person or persons, or any other group operating the child care facility from continuing the violation.

4. It shall be the duty of the department, through its duly authorized agents, to inspect at regular intervals all child care facilities and child-placing agencies that are subject to the provisions of the law. These inspections are not to exceed one year, and will be made as deemed necessary by the department without previous notice.

B. Waivers

1. The Secretary of the Department of Social Services, in specific instances, may waive compliance with a minimum standard if it is determined that the economic impact is sufficiently great to make compliance impractical. These standards may be waived as long as the health and well being of the staff and/or the children are not placed in danger. If it is determined that the facility or agency is meeting or exceeding the intent of a standard or regulation, the standard or regulation may be deemed to be met.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, LR 18:970 (September 1992), LR 26:1636 (August 2000).

§5357. Definitions

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

Bureau Bureau of Licensing of the Louisiana Department of Social Services.

Child Care Center is defined as any place or facility operated by any institution, society, agency, corporation, person or persons, or any other group for the primary purpose of providing care, supervision, and guidance of seven or more children, not including those related to the caregiver, unaccompanied by parent or guardian, on a regular basis for at least twelve and one-half hours in a continuous seven-day week. Related or relative is defined as the natural or adopted child or grandchild of the caregiver or a child in the legal custody of the caregiver. A recognized religious organization which is qualified as a tax-exempt organization under Section 501(c) of the Internal Revenue Code and does not operate more than twenty-four hours in a continuous seven-day week is not considered a day care center.

Child Care Staff an individual directly involved in the care and supervision of the children in the center.

Class A License issued to centers that meet Class A minimum standards.

Class B License issued to centers that meet Class B minimum standards.

Committee on Private Child Care writes and oversees the implementation of the Class B minimum standards.

Corporal Punishment shall be defined as and limited to a spanking.

Department the Department of Social Services.

Director an individual employed by the owner of the center or by a board of a church or other organization to be responsible for the operation of the child care center.

Discipline Policy a policy that is to be made available to each parent/guardian and outlines the discipline (corporal

or noncorporal punishment) plan to be administered by the center.

Hereditary Relationship is defined as the natural or adopted child or grandchild of the caregiver or a child in the legal custody of the caregiver.

Incident Report a record book that staff can record injuries in that a child may have arrived at school with. Each entry should be recorded, signed by the person making the report, and signed by a witness to the injury and report.

Master Card, Child's an information form that gives identifying and pertinent information on each child.

Medication Permission Slip an authorization form which gives the child care center parents' permission (and dosage instructions) regarding administering medication to their child.

Montessori School a school that has a BESE Board Certification to be a Montessori School classification.

Owner the individual or organization that owns the center, but who may employ a person to be a full-time director responsible for the operation of the center or who may retain the responsibility as director.

Personnel Health Record gives medical information of employees indicating a current check of communicable diseases.

Shall or Must mandatory.

Spanking a striking by the director's open hand on the clothed buttocks of a child older than 24 months of age as punishment.

Substitute Employee an individual hired to take the place of any staff member.

Temporary Employee an individual who, on an occasional basis, works under the supervision of a regular staff member.

Voluntary Worker an individual who volunteers services or supplements the regular staff, on an occasional basis.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, LR 18:970 (September 1992), LR 26:1636 (August 2000).

§5359. Procedures

A. Initial Application

1. Anyone applying for a license after the effective date of these standards shall meet all of the requirements herein.

2. Before beginning operation, it is mandatory to obtain licenses from the Department of Social Services, Bureau of Licensing. To do so, the following steps should be followed.

a. Prior to purchasing, leasing, etc. carefully check all local zoning and building ordinances in the area where you are planning to locate. Standards from the Office of Public Health, Sanitation Services; Office of the State Fire Marshal, Code enforcement and Building Safety; and City Fire Department (if applicable) should be obtained.

b. After securing a building, obtain an application form issued by:

Department of Social Services
Bureau of Licensing
P. O. Box 3078

Baton Rouge, LA 70821-3078

Phone: (225) 922-0015

Fax: (225) 922-0014

c. The completed application shall indicate Class "B" license. Anyone applying for State or Federal funding shall apply for a Class "A" license. Licensure fees are required to be paid by all centers. A Class "B" may not be changed to a Class "A" license if revocation procedures are pending. (However, child care facilities or agencies licensed as a Class "B" facility and owned or operated by a church or religious organization are exempt from annual license fees.)

d. After the center's location has been established, complete and return the application form. It is necessary to contact the following offices prior to building or renovating a center:

- i. Office of Public Health, Sanitation Services;
- ii. Office of the State Fire Marshal, Code Enforcement and Building Safety;
- iii. Office of City Fire Department (if applicable);
- iv. Zoning Department (if applicable);
- v. City or Parish Building Permit Office.

e. After the application has been received by the Bureau of Licensing, the Bureau will request the Office of State Marshal, Office of City Fire Department (if applicable), Office of Public Health and any known required local agencies to make an inspection of the location, as per their standards. However, it is the applicant's responsibility to obtain these inspections and approvals. A Licensing Specialist will visit the center to conduct a licensing survey.

f. A license will be issued on an initial application when the following items have been met and written verification is received by the Bureau of Licensing:

- i. fire approval (state and city, if applicable);
- ii. health approval;
- iii. zoning (if applicable);
- iv. full licensure fee paid (if applicable);
- v. three positive references on the Director;
- vi. licensure survey verifying substantial compliance.

3. When a center changes location, it is considered a new operation and a new application and fee for licensure shall be submitted. All items listed above shall be resubmitted, except references if the Director remains the same.

4. When a center changes ownership, a new application and fee shall be submitted. All approvals listed above shall be current. Documentation is required from the previous owner assuring change of ownership, i.e., letter from previous owner, copy of Bill of Sale or a lease agreement.

5. All new construction or renovation of a center requires approval from agencies listed above and the Bureau of Licensing.

6. The Bureau is authorized to determine the period during which the license shall be effective. A license is valid for the period for which it is issued unless it is revoked due to center's failure to maintain compliance with minimum standards.

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

8. If a Director or member of his immediate family has had a previous license revoked, refused, or denied, upon

re-application, the applicant shall provide written evidence that the reason for such revocation, refusal or denial no longer exists. A licensing survey will then be conducted to verify that the reasons for revocation, refusal, or denial have been corrected and the Director and/or center is in substantial compliance with all minimum standards.

9. A license shall apply only to the location stated on the application and such license, once issued, shall not be transferable from one person to another or from one location to another. If the location or ownership of the facility is changed, the license shall be automatically revoked. A new application form shall be completed prior to all changes of ownership or location.

B. Fees

1. An initial application fee of \$25 shall be submitted with all initial applications, including all church owned and operated centers. This fee will be applied toward the total licensure fee, which is due prior to licensure of center. This fee is to be paid by all initial and change of location providers. The full licensure fee shall be paid on all Changes of Ownership. All fees shall be paid by certified check or money order only and are nonrefundable.

2. Annual licensure fees are required prior to issuance or renewal of the license. (However, child care facilities or agencies licensed as a Class "B" facility and owned or operated by a church or religious organization are exempt from license fees.) License fee schedules (based on capacity) are listed below:

| License Fee Schedules | |
|-----------------------|-------|
| Capacity | Fee |
| 15 or fewer | \$25 |
| 16-50 | \$100 |
| 51-100 | \$175 |
| 101 or more | \$250 |

3. Other Licensure Fees:

a. Twenty-five dollar replacement fee for any center replacing a license when changes to the license are requested by the Director, i.e., changes in capacity, name change, age range change. (There is no processing charge when the request coincides with regular renewal of license.)

b. Five dollar processing fee for issuing a duplicate license with no changes.

C. Exemptions

1. The only exemption to licensure is private or public day schools serving children in grades one and above or pre-kindergartens and kindergartens. Also exempt are state certified Montessori schools and camps, as well as all care given without charge.

D. Licensing Changes

1. Bureau of Licensing shall be notified before changes are made which might have an effect upon the license (for example, a change in age range of children to be served or a change in space of facility).

E. Relicensing. The relicensing survey is similar to the original licensing survey.

1. Renewal applications will be mailed to centers approximately 60 days prior to the expiration for execution. The application shall indicate any changes the center needs to make (example: hours of operation, ages of children, etc.).

2. Relicensing surveys will be made by the Department of Social Services, Bureau of Licensing, Office

of the State Fire Marshal, the Office of Public Health and others as the City Fire Marshal, Zoning (if applicable). Approvals of each must be received by the Department of Social Services, Bureau of Licensing before a new license will be issued. The director will review with the licensing specialist the findings and will be furnished a copy for any necessary action. It is the responsibility of the center owner/director to obtain the approvals before the current license's expiration date.

3. The Department of Social Services and the Office of the State Fire Marshal must approve any proposed structural changes, ratio adjustments, and variance of space used before changes are made which may affect the center's license.

F. Denial, Revocation or Nonrenewal of License. An application for a license may be denied, or a license may be revoked, or renewal thereof denied, for any of the following reasons:

1. violation of any provision of R.S. 46:1401 et seq. or failure to meet any of the minimum standards, rules, regulations or orders of the Department of Social Services promulgated thereunder;

2. cruelty or indifference to the welfare of the children;

3. conviction of a felony or any offense of a violent or sexual nature or an offense involving a juvenile victim, as shown by a certified copy of the record of the Court of conviction, of the applicant;

a. or, if the applicant is a firm or corporation, any of its board members or officers;

b. or of the person designated to manage or supervise the center;

4. history of noncompliance;

5. disapproval from any agency whose approval is required for licensure;

6. nonpayment of licensure fee and/or failure to submit application for renewal prior to the expiration of the current license;

7. any validated instance of cruel, severe, or unusual punishment, physical or sexual abuse and/or neglect if the owner is responsible or if the employee who is responsible remains in the employment of the center;

8. the center is closed with no plans for reopening and no means of verifying compliance with minimum standards for licensure;

9. any proven act of fraud such as falsifying or altering document(s) required for licensure;

10. center refuses to allow the Bureau to perform mandated duties, i.e., denying entrance to the center, lack of cooperation for completion of duties, etc.

G Appeal Procedure

1. If the license is denied, refused or revoked, the Bureau shall notify the day care center of the reasons for denial, refusal or revocation.

a. The day care operator may appeal this decision by submitting a written request including reasons to the Appeals Bureau, P.O. Box 2944, Baton Rouge, LA 70821-9118. This written request must be postmarked within 30 days of the operator's receipt of the above notification.

b. The Appeal's Bureau shall hold a hearing after receipt of such a request.

c. Within 90 days after the date the appeal is filed, the Appeal's Bureau shall advise the appellant by registered letter of the decision, either affirming or reversing the original decision. If the license is refused or revoked, the center shall immediately terminate operation.

H. Advertising

1. Any Class "B" facility which advertises the fact that it is licensed under Louisiana law shall clearly indicate in its advertising that it holds a Class "B" license. In printed materials, Class "B" shall be printed in the same size type as the words "licensed" or "license". In broadcast advertising, a facility shall not advertise the fact that it is licensed without indicating in the same advertisement that the kind of license held is a Class "B" license.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, LR 18:970 (September 1992), LR 26:1638 (August 2000).

§5361. General Requirements

A. The Director shall be responsible for ensuring that the minimum licensing requirements are met.

B. A current child day care license shall be on display, except for church affiliated centers (R.S. 46:1412.C) that choose to keep the license on file and available upon request.

C. A center shall maintain in force at all times current commercial liability insurance for the operation of a center and vehicle (if transportation is provided) to insure medical coverage for children in the event of accident or injury. Documentation shall consist of the insurance policy or current binder that includes the name of the insurance company, policy number, period of coverage and explanation of the coverage.

D. Current written report from the Office of State Fire Marshal.

E. Current written report from the Office of Public Health.

F. Current written report from City Fire (if applicable).

G. Certificate of Occupancy (zoning) (if applicable).

H. Incident log for staff to record any injuries that a child may have upon arrival to the child care center.

I. Each person living in a private residence, part of which is used as a child care facility, shall meet the same medical requirements as employed personnel.

J. Each child living in a private residence, part of which is a child care facility shall meet the same medical requirements as the children enrolled in the center.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, LR 18:970 (September 1992), LR 26:1638 (August 2000).

§5363. Transportation

A. A center that provides transportation of children assumes additional responsibility and liability for the safety of the children.

B. Transportation Plan

1. If transportation is provided, even on an irregular basis, the center shall have a written statement identifying the type of transportation provided, i.e., to and from home,

to and from school, to and from swimming or dancing lessons, field trips, etc.

2. If transportation to/from home and/or school is provided the center shall have a written plan that states the following:

- a. geographical areas served;
- b. time schedule of the services; and
- c. fee, if any, for transportation services.

C. Transportation Furnished by the Center

1. When transportation is provided, the director shall insure that:

a. transportation arrangements conform to state laws;

NOTE: For additional information regarding state laws, contact the Office of Public Safety.

b. at least two staff, one of whom may be the driver, shall be in each vehicle unless the vehicle has a communication device and child/staff ratio is met in the vehicle;

c. at least one staff in each vehicle shall be currently certified in CPR;

d. children are under the direct supervision of staff at all times. The driver or attendant shall not leave the children unattended in the vehicle at any time while transporting children;

e. each child shall board the vehicle from the curbside of the street and/or shall be safely escorted across the street;

f. each child is delivered to a responsible person authorized in writing by the parent;

g. a designated staff person shall be present when the child is delivered to the center;

h. good order shall be maintained on the vehicle;

i. the driver shall check the vehicle at the completion of each trip to ensure that no child is left on the vehicle and all children were picked up and dropped off at the correct locations;

j. the vehicle shall be maintained in good repair; and

k. the use of tobacco in any form, use of alcohol and possession of illegal substances or unauthorized potentially toxic substances, firearms, pellet or BB guns (loaded or unloaded) in any vehicle while transporting children is prohibited.

2. Children shall not be transported in the back of a pickup truck.

3. All drivers and vehicles shall be covered by liability insurance as required by law.

4. The driver shall hold a valid appropriate Louisiana driver's license.

5. Each driver or attendant shall be provided with a current master transportation list including each child's name, pick up and drop off locations and authorized persons to whom child may be released.

6. The center shall maintain a daily transportation attendance record.

7. The vehicle shall have evidence of a current safety inspection.

8. There shall be first aid supplies in the vehicle, i.e. Band-Aids, peroxide, etc.

9. There shall be information in each vehicle identifying the center's name, telephone number and address for emergency situations.

10. A fire extinguisher shall be stored in the vehicle.

D. Field Trips

1. Whether transportation for field trips is provided by the center, parents, or an outside source, there shall be signed parental authorization for each child to leave the center and to be transported in the vehicle.

E. Transportation by Contract

1. When the center contracts with an outside source for transportation, there shall be an agreement on file signed and dated by the Director and a representative of the transportation agency stating that all rules for transportation shall be followed as stated in the law and the regulations. The center shall select a transportation agency with a good reputation and reliable drivers.

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

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 26:1639 (August 2000).

§5365. Center Staff

A. All center staff includes the director, teachers, child care staff, and any other employees of the center such as the cook, housekeeper, and chauffeur.

B. All center staff must be at least 18 years of age or older. However, the center may employ a person 16 or 17 years old that works under the direct supervision of a qualified adult staff person.

C. Personnel Records

1. Employment Application. There shall be an employment application for each regularly employed and substitute member of the staff. This application shall include the actual date of hire, all pertinent personal information, past work experience, educational background.

2. References. Center staff shall be known in the community to be of good reputation as verified by at least three non-related reference checks. There shall be on file in the center three letters of reference or documentation that at least three reference were contacted by the director/provider prior to employment.

3. I-9 Form. A completed I-9 form (U.S. Immigration and Naturalization Service Employment Eligibility Form) required after November 1986.

4. Criminal Records Check. A criminal records check shall be requested by the director/provider prior to the employment of any staff person. Documentation of a criminal records check and fingerprinting application as required by R.S.15:587.1 after September 1, 1987.

a. Criminal Record clearance is not transferable from one employer to another.

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

5. Health Requirements

a. All center staff shall be required to obtain three months before or within 30 days after beginning work and at least every three years thereafter a written statement from a physician certifying that the individual is in good health and is physically able to care for the children, and is free from infectious and contagious diseases.

b. At the time of employment, the individual shall have no evidence of active tuberculosis. Tuberculin test

result dated within one year prior to offer of employment is acceptable. Staff shall be retested on time schedule as mandated by the Office of Public Health. For additional requirements, refer to Chapter II of State Sanitary Code.

c. The director or any center staff shall not remain at work if he/she has any sign of a contagious disease.

d. Substitute workers, temporary employees, or volunteers shall meet the same medical requirements as regularly employed personnel. Refer to substitute and temporary employees as defined.

6. Job Descriptions. A personnel job description shall be kept on file detailing employee's responsibilities.

7. Personnel Records. Personnel records shall be kept on file for a minimum of one year after the employee leaves. Health records may be returned to the staff member upon request.

D. Personnel Training

1. The provider/director shall plan and implement procedures relating to new staff development. This shall include the following:

- a. provisions for a one-day orientation to center policies and practices;
- b. health and safety procedures; and
- c. four days of supervised working with children;
- d. documentation of orientation shall consist of a statement in the employee's record signed by the employee and director attesting to having received such orientation.

2. Providers/Directors shall conduct, at a minimum, one staff training session or meeting each quarter. The training session/meeting should include such matters as program planning, sharing new materials, and discussing center policy. Documentation of the training sessions/meetings including date and staff signatures shall be kept on file in the center.

3. Books, magazines, periodicals, pamphlets and journals relating to child care shall be available to staff. Documentation shall consist of observing that these materials are accessible in the facility to the staff.

4. CPR training for infant and child is required of one-half of the current staff on the premises. Documentation will be a copy of the certification card on file at the center.

a. This training may satisfy the requirement for a staff quarterly training session (§5365.D.2).

b. Certification will qualify for four "clock hour" training credit toward a new Director's requirements. (§5369.A.2.a-h)

5. If a center cares for children eight years and up, at least one staff shall be required to have Adult CPR when those children are present. Documentation will be a copy of the certification card on file at the center.

6. All staff shall have three continuing education hours annually through attendance at child care workshops or conferences i.e. LAECA, LAPACC, NAEYC, etc., or local physician, dentist, public library, PBS, universities and extension services, etc. This is in addition to the three hours required for Health and Safety. These hours will be recognized by the Bureau without prior approval. The hours shall be documented and kept on file. This documentation shall include number of hours, topic, trainer, staff name, date and signature of the Director and/or the trainer.

7. All personnel are to be trained in emergency and evacuation procedures appropriate for the area in which the

center is located. Documentation of training shall be kept on file at the child care center.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, LR 18:970 (September 1992), LR 26:1640 (August 2000).

§5367. Childrens' Records

A. The center shall have on file and available at all times the following records for each child in care:

1. master card. General information regarding child to include medical history;
2. immunization record;
3. written parental/guardian authorization for release of child to a third party; and
4. written parental/guardian authorization for the center to administer and/or secure emergency medical treatment.

B. For licensing purposes, children's records shall be kept on file a minimum of one year from the date of discharge from the center.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, LR 18:970 (September 1992), LR 26:1640 (August 2000).

§5369. Personnel

A. Director Qualifications

1. must be at least 21 years of age;
2. must have documentation of at least one of the following:
 - a. bachelor's degree from a regionally accredited college or university with at least six credit hours of child development or early childhood education and one year of supervised child care experience in a licensed center or comparable setting;
 - b. a Child Development Associate Credential which includes practicum and one year experience in a licensed center;
 - c. an Associate of Arts degree in child development or a closely related area and one year of supervised child care experience in a licensed center or a comparable setting;
 - d. one year of experience as a director or staff in a licensed child care center plus 12 credit hours in child care child development or early childhood education. Fifteen "clock hours" may be substituted for each three credit hours;
 - e. diploma from a vocational child care training program approved by the Board of Regents or equivalent plus one year of supervised child care experience in a licensed child care center or comparable setting;
 - f. a National Administrator Credential as awarded by the National Child Care Association, and one year experience in a licensed child care center, or comparable setting;
 - g. certificate of completion from the International Correspondence School and one year experience in a licensed child care center or comparable setting;
 - h. certificate of completion from the Professional Career Development Institute and one year of experience in a licensed child care center or comparable setting.

3. A comparable setting must be approved by the Bureau.

4. Licenses issued after September 30, 2000 must meet one of the requirements (5369.A.2.a-h). All directors employed prior to September 20, 2000 will be exempt from meeting director qualifications. These directors, however, are encouraged to work toward one of these requirements.

B. Required Center Staff

1. If the number of children exceeds 42 the director shall be a full-time administrator. When the director is not on the premises, there must be an individual designated as responsible for the operation of the center.

2. If the center does not exceed 42 children as their enrollment, there must be an individual designated as responsible for the operation of the center.

3. If the director is responsible for more than one center, there must be an individual designated as responsible for the operation of each center.

4. There shall be provisions for substitute help if the director or any regular employee is absent from the center.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, LR 18:970 (September 1992), LR 26:1641 (August 2000).

§5371. Required Child/Staff Ratios

A. Required Ratios for Ten or Less Children:

1. Below are the required child/staff ratios for centers serving ten or fewer children (including the operator's and/or staff's own children):

| Children Staff | |
|---|---|
| 10 (if no more than two children are under age two) | 1 |
| 10 (if three or more children are under age two) | 2 |

B. Required Ratios for Eleven or More Children:

| Children Staff | |
|--|---|
| 6 (Non-walkers and toddlers under 12 months) | 1 |
| 8 (Toddlers, 12 months to 23 months) | 1 |
| 12 (Two-Year-Olds, 24 months to 36 months) | 1 |
| 14 (Three-Year-Olds, 36 months to 48 months) | 1 |
| 16 (Four-Year-Olds, 48 months to five years old) | 1 |
| 20 (five to six year olds) | 1 |
| 25 School Age (six-year-olds and up) | 1 |

1. Mixed Ages

a. When the center serves children of mixed ages, excluding children under two years, an average of the staff ratio may be applied.

2. Staff Involved in Ratio

a. Only those staff members directly involved in child care and supervision shall be considered in assessing child/staff ratio.

3. Other Required Staff

a. When the number of children in the center exceeds 10, there must be an individual immediately available in case of an emergency.

b. If day and night care is offered, there must be separate staff.

c. At naptime, appropriate staffing shall be present within the center to satisfy required child/staff ratio.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, LR 18:970 (September 1992), LR 26:1641 (August 2000).

§5373. Physical Plant and Equipment

A. Indoor/Outdoor Space Required. The center shall be used exclusively by the children and center staff during operating hours. Area licensed for use as a child care center shall not be dually licensed.

1. Indoor Space

a. There shall be a minimum of indoor space of at least 35 square feet per child. The space shall not include toilet facilities, hallways, lofts, storage or food preparation areas, or offices. Any room counted as play space shall be available for play during play hours. If rooms are used exclusively for dining or sleeping, they cannot be included in the licensed capacity.

b. There shall be provisions for temporarily isolating a child having or suspected of having a communicable disease so he/she can be removed from the other children. Movable partitions are permissible so that the space may be used for play when not needed for isolating an ill child.

c. An area, i.e. bathroom, partitioned area, etc., shall be maintained for the purpose of providing privacy for diapering, dressing and other personal care procedures for children beyond the usual diapering age.

2. Outdoor Play Space

a. There shall be outdoor play space with direct exit from the center into the outdoor play yard.

b. The outdoor space shall provide a minimum of 75 square feet for each child in the outdoor play space at any one time. The minimum outdoor play space shall be available for at least one-half of the licensed capacity.

c. The outdoor play space shall be enclosed with a fence or other barrier in such a manner as to protect the children from traffic hazards, to prevent the children from leaving the premises without proper supervision, and to prevent contact with animals or unauthorized persons.

d. Crawlspace and mechanical, electrical, or other hazardous equipment shall be made inaccessible to children.

e. Areas where there are open cisterns, wells, ditches, fishponds and swimming pools or other bodies of water shall be made inaccessible to children by fencing.

3. A soft surface shall be provided under climbing apparatus with a potential fall of four feet or more to the ground. Soft surface examples are pea gravel, sand, wood chips, sawdust, or mats.

B. Furnishings and Equipment

1. There shall be a working telephone at the center.

2. Appropriate emergency numbers shall be posted, such as fire department, police department, and medical facility.

3. Play equipment of sufficient quantity and variety for indoor and outdoor use shall be provided which is appropriate to the needs of the children as follows:

a. equipment which encourages active physical play (for example, climbing apparatus, swings, wheel-toys); and

b. equipment which encourages quiet play or activity (for example, sand clay, crayons, paints, story and picture books, dolls, puzzles, and music).

4. The equipment shall be maintained in good repair.

5. The center shall make provisions for storage space within easy reach of the children for the storage of play materials in appropriate play areas. Toy chests with attached lids are prohibited.

6. There shall be individual spaces for each child's clothing and personal belongings.

7. Chairs of a suitable size and table space shall be available for each child two years or older.

8. Individual and appropriate sleeping arrangements must be provided for each child.

a. State and local health requirements regarding sleeping arrangements must be met.

b. Each child shall provide or be provided with a mat, cot or bed age appropriate. Playpens shall not be substituted for a baby bed/crib.

c. While in use, each mat, cot or bed shall be placed 18 inches apart and shall be arranged in a head to toe configuration. Each one shall be labeled for individual use.

9. Smoking shall not be allowed on the child care premises.

C. Fire Safety

1. Fire drills shall be conducted at least once per month. These shall be conducted at various times of the day and shall be documented as follows:

a. date and time of day;

b. number of children;

c. lapse time of drill;

d. problems and solutions if any; and

e. staff signatures.

D. Safety Regulations

1. Drugs, poisons, harmful chemicals, all products labeled "Keep out of the reach of children," equipment and tools shall be locked away from the children. Whether a cabinet or an entire room, the storage area must be locked.

2. Refrigerated medications shall be in a secure container to prevent access by children and avoid contamination of food.

3. Secure railings shall be provided for:

a. flights of more than three steps;

b. porches more than three feet from the ground.

4. Gates shall be provided at the head or foot of each flight of stairs to which children have access.

5. Accordion gates are prohibited.

6. First Aid Supplies shall be available at the day care center. (Suggestions for first aid supplies may be obtained from the Red Cross.)

7. The center and yard must be clean and free from hazards.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, LR 18:970 (September 1992), LR 26:1642 (August 2000).

§5375. Admission of Children

A. Admission of children shall include an interview with the parent or guardian to:

1. secure necessary information about the child; and

2. provide a Parents' Handbook about the center's programs, policies, fees and a basic daily center schedule.

B. Parents or guardians must be provided with a written description of the center's discipline policy.

C. Discrimination by child daycare centers on the basis of race, color, creed, sex, national origin, handicapping condition or ancestry is prohibited. A policy shall include this written statement.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, LR 18:970 (September 1992), LR 26:1642 (August 2000).

§5377. Care of Children

A. Nutrition

1. If the Center prepares any meals, well-balanced and nourishing meals shall be made available to children in care.

a. Children in care for more than four hours shall be provided meals using the four basic food groups (bread, fruits and vegetables, dairy products, protein products) that provide approximately one-third to one-half of the current Recommended Dietary Allowances of the National Research Council. (See Appendix A)

b. Additional servings of nutritious food over and above the required daily minimum shall be made available to children as needed if not contradicted by special diets.

c. To ensure well-balanced and nourishing meals, the specified patterns for meals (See Appendix A) shall be referenced.

2. Milk shall be served to the children at least once a day.

3. Children in full-time care shall have two snacks and one meal daily.

4. Weekly menus for meals and snacks shall be posted if the center prepares the food. Substitutions shall be posted on or near the menu.

5. It is permissible for children to bring their own food to the center.

6. Bottled formula for infants must be labeled.

7. If the parent provides the daily meal, parents should be encouraged to prepare meals which are well balanced and nutritious but with the understanding that what the parent provides is acceptable.

8. Infants are to be fed and supervised individually.

a. Infants shall be held while feeding.

b. A bottle shall not be propped at any time.

c. Parents shall supply the center with a schedule of feeding times for their infant.

9. Drinking water shall be readily available to the children in single service cups or cups that can be sanitized.

a. Drinking fountains are permissible.

b. Children shall be offered water at intervals at a minimum of 2 2 hours and after each outdoor activity.

10. Children's food shall be served on individual plates, napkins, paper towels or in cups as appropriate.

B. Health Service to the Child

1. No drugs of any type, including aspirin, shall be given by the center personnel unless authorized in writing by the parent. Authorization shall include the name of the child and medication, date(s) to be given, time to be given, dosage, and signature of parent.

2. Documentation shall be maintained verifying that medication was given according to parent's authorization, including the date, time and signature of the staff member who gave the medication.

3. All medication shall remain in the original container.

4. If symptoms of contagious or infectious diseases develop while the child is in care, he/she shall be in supervised isolation away from the other children until a parent or designated person has been contacted and the child has been picked up from the center.

5. Any child who has had a 100°F oral temperature or 101°F rectal temperature reading the last 12 hours is suspect.

6. Children with the following illnesses or symptoms shall be excluded from the center based on potential contagiousness (communicability) of the disease. Periods may be extended beyond this depending upon individual conditions.

| Illness/Symptom | Exclude Until |
|--|--|
| Meningococcal disease (Neisseria meningitis) | Well with proof of noncarriage* |
| Hib disease (hemophilus) | Well with proof of noncarriage* |
| Diarrhea (two or more loose stools or over and above what is normal for that child). | Diarrhea resolved or is controlled (Contained in Diaper or toilet) |
| Fever of unknown origin (100°F oral or 101°F rectal or higher) some behavioral signs of illness. | Fever resolved or cleared by child's physician or Health department |
| Chicken pox | Skin lesions (blisters) Scabbed over completely |
| Hepatitis A | One week after illness started and fever gone |
| Aids (or HIV infection) | Until child's health, neurologic development, behavior, and immune status is deemed appropriate (on a case-by-case basis) by qualified persons**, including the child's physician, chosen by the child's parent or guardian and the Director |
| Undiagnosed generalized rash | Well or cleared by child's Physician |
| Any child with a sudden onset of vomiting, irritability, or excessive sleepiness. | Evaluated and cleared by child's physician |

* Proof of noncarriage. Either by completion of appropriate drug regimen of Rifampin or by a negative throat culture obtained after completion of treatment for meningitis.

** These persons include the child's physician and other qualified individuals such as the Director, a representative of the state's Office of Public health, and a child development specialist and should be able to evaluate whether the child will receive optimal care in the specific program being considered and whether HIV-infected child poses a potential threat to others.

7. With most other illnesses, children have either already exposed others before becoming obviously ill (i.e. colds), or are not contagious one day after beginning treatment (i.e., strep throat, conjunctivitis, impetigo, ringworm, parasites, head lice, and scabies).

8. The parent or designated person shall be notified and incident documented if:

- a. child develops symptoms of illness; or
- b. suffers a serious accident in child care;

9. all head injuries shall be reported to parents immediately.

10. An accident report including incidents shall be maintained detailing accident/incident of child and the action taken by the staff/director.

C. Daily Program

1. There shall be a schedule of the day's plan of activities posted in each classroom or center providing for flexibility and changes, as deemed necessary.

2. The program of activities shall be adhered to with reasonable closeness but shall accommodate and have due regard for individual differences among the children.

3. The program shall provide time and materials for both vigorous and quiet activity for the children to share or to be alone, indoor and outdoor play and rest. Regular time should be allowed for routines such as washing, lunch, rest, snack and putting away toys. Activity and quiet periods should be alternated so as to guard against over stimulation of the child.

4. Children shall have a rest period of at least one hour.

5. While awake, infants and toddlers shall not remain in a crib, a baby bed, or a playpen for more than 30 minutes continuously.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, LR 18:970 (September 1992), LR 26:1643 (August 2000).

§5379. Care for Children During Nighttime Hours

A. The Minimum Standards for child care centers also apply to centers which provide care after 9 p.m. with the inclusion of the following standards as set forth in this section.

1. Any child care center caring for children at night must follow the same requirements for personnel standards as previously stated.

2. A minimum of one adult shall be present at all times during nighttime care.

3. In addition, the following standards shall apply.

a. The adult in charge must remain awake all night and directly supervise the children at all times.

b. Meals must be served to children who are in the center at the ordinary meal times.

c. Each child shall have separate sleeping accommodations. These accommodations shall include age appropriate crib, cot with a mat or mattress or bed.

d. Evening quiet time such as story time, games, and reading shall be provided to each child arriving before bedtime.

e. No physical restraints shall be used to confine children to bed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by

the Department of Social Services, Office of the Secretary, LR 18:970 (September 1992), LR 26:1644 (August 2000).

§5381. Discipline

A. Each center shall establish a written policy in regard to methods of discipline stating what methods of discipline will and will not occur. This statement must be made available to parents/guardians and licensing personnel.

B. If corporal punishment is used, the following guidelines are applicable and shall be included in the written discipline policy.

1. Permission for corporal punishment must be in writing from the parents. Documentation of details of the incident/infraction and punishment administered is required. A copy of the documentation must be kept on file at the child care center and a copy given to the parents.

2. Parents must be notified by phone before corporal punishment is administered. Documentation of the phone contact must be kept on file.

3. Written permission for corporal punishment of a child shall not be a preadmission requirement for children to be enrolled in a child care program.

4. Corporal punishment will not be used on children 24 months and younger.

5. Any implement other than the open hand shall not be considered as corporal punishment but mistreatment of the child.

6. Corporal punishment shall only be administered by the director in the form of and not more than three spanks of the open hand on the clothed buttocks of a child older than 24 months of age. A second adult must be present during the administration of the spanking and the spanking must be documented and signed by both adults present.

C. Cruel, severe, unusual, or unnecessary punishment shall not be inflicted on children.

D. Derogatory remarks shall not be made in the presence of the children about family members of the children in care or about the children themselves.

E. No child or group of children shall be allowed to discipline another child.

F. When a child is removed from the group for disciplinary reasons, he shall never be out of sight of a staff member.

G. No child shall be deprived of meals or any part of meals for disciplinary reasons.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, LR 18:970 (September 1992), LR 26:1644 (August 2000).

§5383. Abuse and Neglect

A. Any suspected abuse and/or neglect of a child in a child care center must be reported in accordance with R.S. 14:403. This statement shall be visibly posted in the center with the local child protection phone number.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, LR 18:970 (September 1992), LR 26:1644 (August 2000).

§5385. Supervision

A. Children shall be supervised at all times. All children shall never be left alone in any room or outdoors at any time without a staff present.

B. While on duty with a group of children, child care staff members shall devote their entire time:

- 1. in supervision of the children; and
- 2. in participating with them in their activities.

C. Individuals who do not serve a purpose related to the care of children and/or hinder supervision of the children shall not be present in the center.

D. At naptime, children may be grouped together with one worker supervising the children sleeping while other workers rotate various duties and lunchtime. All children sleeping must be in the sight of the naptime worker. However, appropriate staffing must be present within the center to satisfy state required child/staff ratios.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, LR 18:970 (September 1992), LR 26:1644 (August 2000).

J. Renea Austin-Duffin
Secretary

RULE

**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 hereby amends 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 26:1645 (August 2000).

§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 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.

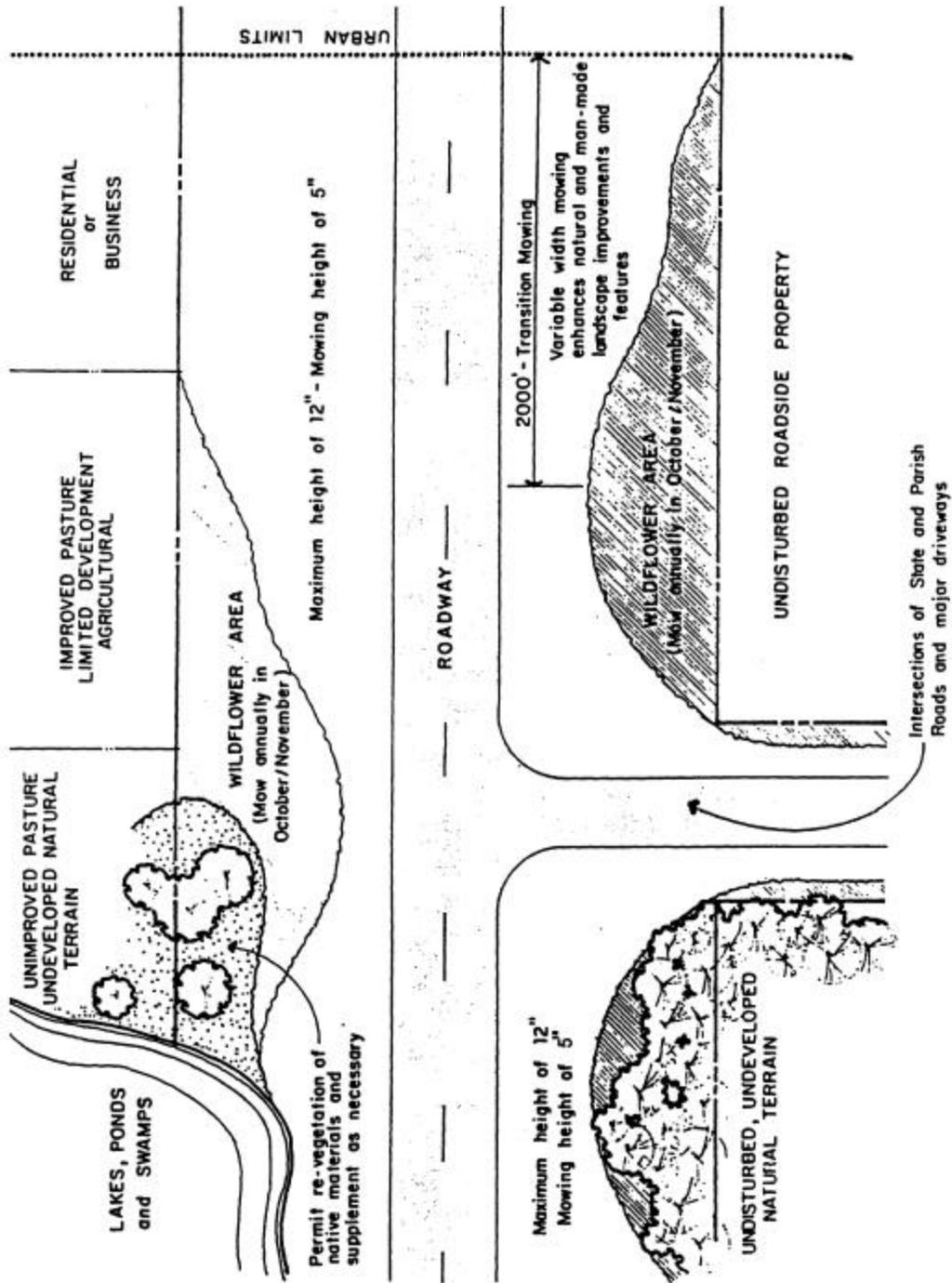
3. Areas that are not applicable, i.e., wildflower areas.

4. Areas where seedlings are planted and/or permitted to grow.

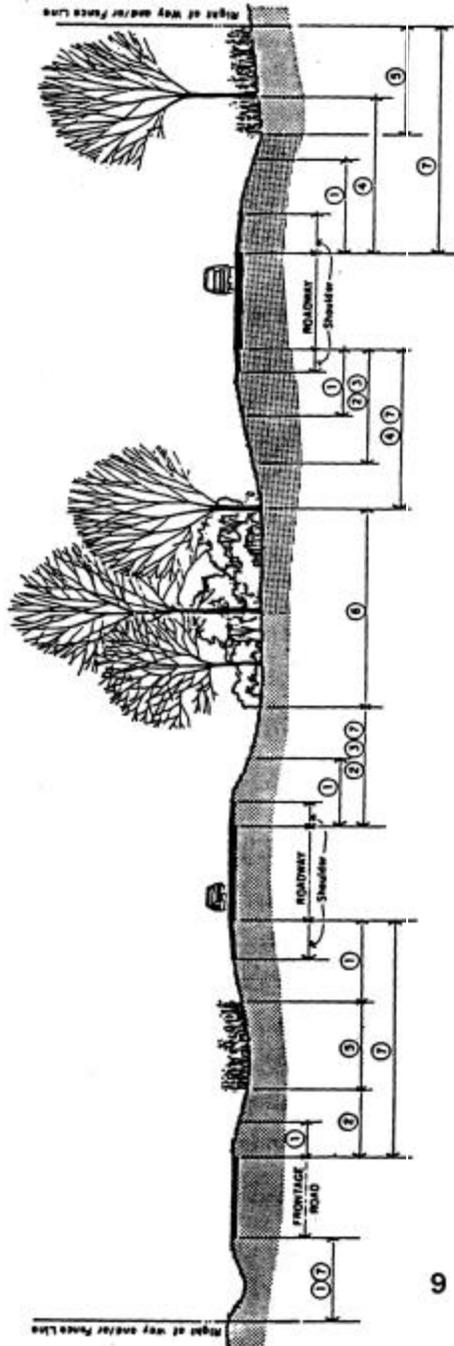
5. Rest areas and tourist information centers, on the interstate system, are to be maintained by the caretakers in a lawn-type condition.

6. Unmowable areas within defined mowing limits.

F. General Vegetation Management Plan



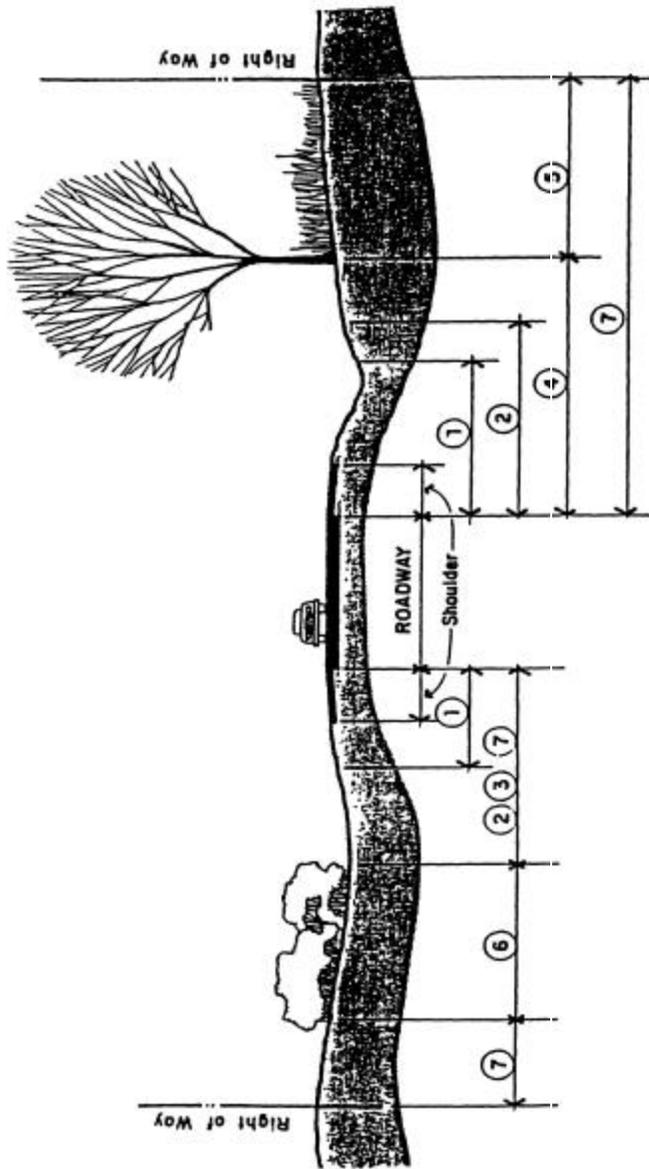
GENERAL VEGETATION MANAGEMENT PLAN



- 1 When vegetation reaches a height of 12", mow a 30' strip from the edge of the roadway surface or to the top of the backslope to facilitate drainage. Mowing height should be 5". Medians less than 80' wide are to be mowed in their entirety each mowing cycle unless wildflowers are present. If wildflowers are present, mow around them. Delay mowing the wildflower area until after they have gone to seed. Along frontage roads, mow a 7' wide strip from the edges of the roadway surface or to the back side of the ditch to facilitate drainage.
- 2 General herbicide treatment is to be confined to an area of approximately 30 feet in width from the edge of all roadways, where right-of-way is available, or to the back of the required drainage channel to insure proper drainage. Spot treatment is allowable beyond this area to eliminate weed species. Avoid spraying wildflowers and other desirable vegetation. Refer to general condition 1-12 and herbicide chapter for additional information.
- 3 Native shrubs may be allowed to revegetate to a distance of 30' from the edge of the roadway.
- 4 Native trees, which will attain a trunk diameter of 4" or greater, may be allowed to revegetate to a distance of 40' from the edge of the roadway.
- 5 Wildflower areas - Do not mow until wildflowers have gone to seed. Refer to wildflower chapter for additional information.
- 6 Area of natural revegetation - Do not mow in this area.
- 7 Mow entire mowable area of the right-of-way annually in late October and November after the wildflowers have bloomed and the seeds have set. In areas which have been allowed to revegetate naturally, mow a 40' wide strip, or to the limits of shrubs and trees.

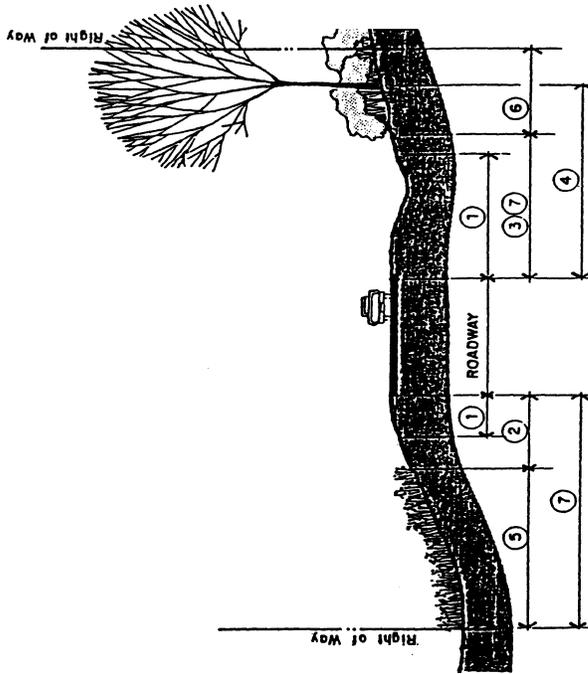
**TYPICAL VEGETATION MANAGEMENT SECTION
 RURAL, PRIMARY MULTI-LANE**

I. Typical Vegetation Management
 Section CRural, Primary Two Lane



- ① When vegetation reaches a height of 12", mow a 30' wide strip from the edge of the roadway surface or to the top of the backslope to facilitate drainage. Mowing height should be 5". If wildflowers are present, mow around them. Delay mowing the wildflower areas until after they have gone to seed.
- ② General herbicide treatment is to be confined to an area of approximately 30 feet in width from the edge of all roadways, where right-of-way is available, or to the back of the required drainage channel to insure proper drainage. Spot treatment is allowable beyond this area to eliminate weed species. Avoid spraying wildflowers and other desirable vegetation. Refer to general condition 1-12 and herbicide chapter for additional information.
- ③ Native shrubs may be allowed to revegetate to a distance of 30' from the edge of the roadway.
- ④ Native trees, which will attain a trunk diameter of 4" or greater, may be allowed to revegetate to a distance of 40' from the edge of the roadway.
- ⑤ Wildflower areas - Do not mow until wildflowers have gone to seed. Refer to wildflower chapter for additional information.
- ⑥ Area of natural revegetation - Do not mow in this area.
- ⑦ Mow entire mowable area of the right-of-way annually in late October and November after the wildflowers have bloomed and the seeds have set. In areas which have been allowed to revegetate naturally, mow a 40' wide strip or to the limits of shrubs and trees.

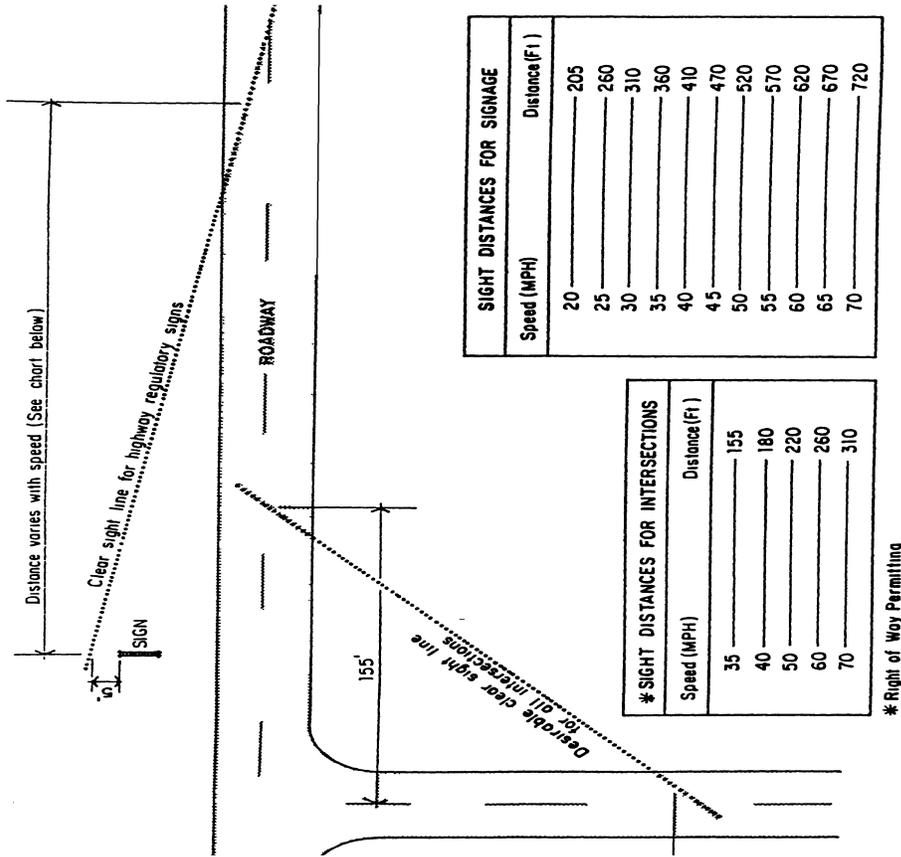
**TYPICAL VEGETATION MANAGEMENT SECTION
 RURAL, PRIMARY TWO LANE**



- ① When vegetation reaches a height of 12", mow a 25' strip from the edge of the roadway surface or to the back edge of the ditch to facilitate drainage. Mowing height should be 5".
- ② General herbicide treatment is to be confined to an area of approximately 30 feet in width from the edge of all roadways, where right-of-way is available, or to the back of the required drainage channel to insure proper drainage. Spot treatment is allowable beyond this area to eliminate weed species. Avoid spraying wildflowers and other desirable vegetation. Refer to general condition 1-12 and herbicide chapter for additional information.
- ③ Native shrubs may be allowed to revegetate to a distance of 30' from the edge of the roadway.
- ④ Native trees, which will attain a trunk diameter of 4" or greater, may be allowed to revegetate to a distance of 40' from the edge of the roadway.
- ⑤ Wildflower areas - Do not mow until wildflowers have gone to seed. Refer to wildflower chapter for additional information.
- ⑥ Area of natural revegetation - Do not mow in this area.
- ⑦ Mow entire mowable area of the right-of-way annually in late October and November after the wildflowers have bloomed and the seeds have set.

TYPICAL VEGETATION MANAGEMENT SECTION RURAL, SECONDARY and FARM to MARKET

K. Sight Distances for Signs and Intersections



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 26:1652 (August 2000).

§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 26:1653 (August 2000).

' 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 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

K. Herbicide Rate Chart

| Product Name | Rate | 500 Gal. | | | Comments |
|--------------|----------|----------|------------|---------|--|
| | | 1,000 | Nov. March | Jan | |
| Acre | Per Tank | & Dec. | & Feb. | April | |
| Oust | 1 oz. | | 16 oz. | 32 oz. | |
| | 2 oz. | | | | X |
| | | | | | 2 |
| | | | | | oz. Oust to be used where Oust is |
| | | | | | 24 oz. 48 oz. X |
| | | | | | required to be 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 |

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.

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 be used in northern part of 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.

Roundup Pro 1 pt. 2 gal 4 gal.

M.S.M.A. 2 qt. 8 gal. 16 gal.
X X Only to be used in southern part of state where 2-4-D is not restricted and on very rare occasions where Roundup will not do as good a job and where there is a very thin stand on Bermuda grass.

2-4-D 2 qt. 8 gal. 16 gal.
2 qt. 8 gal. 16 gal.

Garlon 3A 2 qt. 8 gal. 16 gal.
X X Only to be used in southern part of state where 2-4-D is not restricted and on very rare occasions where Roundup will not do as good a job and where there is a very thin 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. &
& Tank Dec. Feb. April
Oct.

Acre 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 |
| | 1 qt. | To be used on slopes and in 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 |
| Pro | | To be used on shoulders, around guardrails and signs when temperature reaches 70 degree 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 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 |
|---|-------------------------------|---|-------------------------------------|--------------------------------------|

L. Daily Herbicide Spraying Report

**DAILY HERBICIDE SPRAYING REPORT
DISTRICT 05**

DATE
Parish _____ **Route No.** _____ **Control Section** _____ **%Complete** _____
Location _____

Certified Applicator: _____ *Type of Spraying:* (check) _____ *Weather:* _____
 _____ *Contact* _____ *Sunny* _____
 License No. _____ *Absorbed* _____ *Partly Cloudy* _____
 Others Worked: _____ *Selective* _____ *Overcast* _____
 _____ *Root Absorbed Plus Contact* _____ *Rain* _____
 _____ *Temperature* _____

Hours Worked: _____ *Wind:* _____ *Soil Moisture:* _____
 Truck No. _____ *Wind Speed* _____ *Wind Direction* _____
 Spray Equipment # _____ *Shot 1* _____ *Wet* _____
 Pressure _____ *Shot 2* _____ *Med.* _____
 GPA _____ *Shot 3* _____ *Dry* _____
 _____ *Shot 4* _____ _____

| MATERIALS | EPA REGISTRATION NO. | RATE/ACRE | TOTAL USED AT END OF DAY |
|-------------------|----------------------|-----------|--------------------------|
| ARSENAL | 242-346 | | |
| CAMPAIGN | 534-351 | | |
| ESCORT | 352-439 | | |
| FUSILADE DX | 10182-367 | | |
| GARLON 3A | 62719-37 | | |
| GARLON 4 | 62719-40 | | |
| HYVAR XL | 352-346 | | |
| KRENITE S | 352-395 | | |
| MSMA | 19713-42 | | |
| OUST | 352-401 | | |
| RODEO | 524-445 | | |
| ROUNDUP PRO | 524-475 | | |
| 2,4-D AMINE (RUP) | 9779-263 | | |
| DRIFT CONTROL | | | |
| SURFACTANT | | | |
| | | | |
| | | | |
| | | | |
| WATER | | | |
| ACRES SPRAYED | | | |

Unusual Observations Along Route:

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 26:1658 (August 2000).

' 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 state's 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.

C. Louisiana DOTD Wildflower Inventory

LOUISIANA DOTD WILDFLOWER INVENTORY

| | | | |
|---|-----|--------------------|--|
| DOTD DISTRICT: | | * CONTROL SECTION: | |
| PARISH: | | HWY. ROUTE NO.: | |
| MILEPOST FROM: | TO: | ACRES: | |
| PLANTED: | | DATE PLANTED: | |
| NATURAL: | | DATE REPORTED: | |
| FLOWER TYPES (COMMON AND SCIENTIFIC) | | | |
| | | | |
| | | | |
| LOCATION DESCRIPTION (USE ANY LANDMARKS AND INCLUDE WHICH SIDE OF THE HIGHWAY HAS THE WILDFLOWERS) | | | |
| | | | |
| | | | |
| | | | |
| SKETCH AVAILABLE (YES/NO): | | | |
| SPONSOR | | REPORTED BY | |
| NAME: | | NAME: | |
| ADDRESS: | | ADDRESS: | |
| CITY, ZIP: | | CITY, ZIP: | |
| PHONE: | | PHONE: | |

* INFORMATION MAY BE OBTAINED FROM RESPECTIVE DISTRICT OFFICES

PLEASE RETURN COMPLETE FORMS TO: DOTD MAINT. ENGINEERING ADMINISTRATOR
 LA. DEPT. OF TRANSPORTATION & DEVELOPMENT
 P.O. BOX 94245
 BATON ROUGE, LA. 70804-9245

M15-I

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 26:1661 (August 2000).

§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 **AT** 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 four 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:

(a). Where exceptional or unique trees because of size, species or historic value exist.

(b). On designated scenic roads or low-speed roads, as well as low-speed urban roads.

(c). 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.

(d). Locations where the cumulative loss of trees would result in a significant adverse change in character of the roadside landscape.

(e). 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 four 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 ASight 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 Departments 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 (Hemerocalis 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)

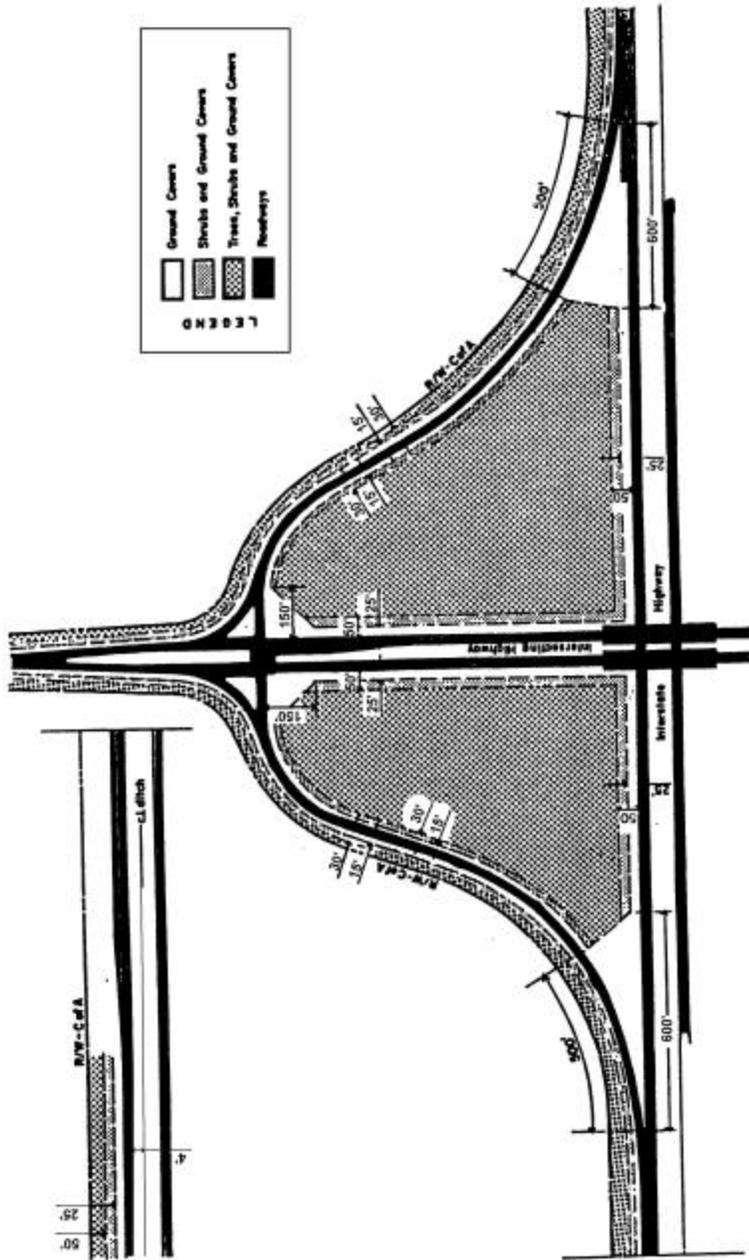
xii. Cypress (Taxodium Distichum)

xiii. Southern Magnolia (Magnolia Grandiflora)

xiv. Weeping Willow (Salix Babylonica)

xv. Pines (MOST VARIETIES) (Pinus)

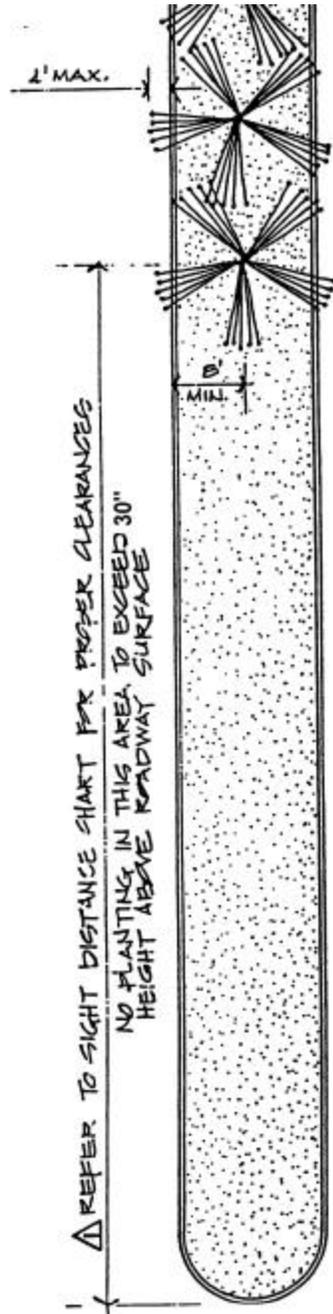
F. Typical Urban Cloverleaf



TYPICAL RURAL INTERCHANGE

- I. Median Planting for Barrier Curbed Roadways
- J. Minimum Setbacks for Highway Plantings without

Barrier Curbs



NOTE:

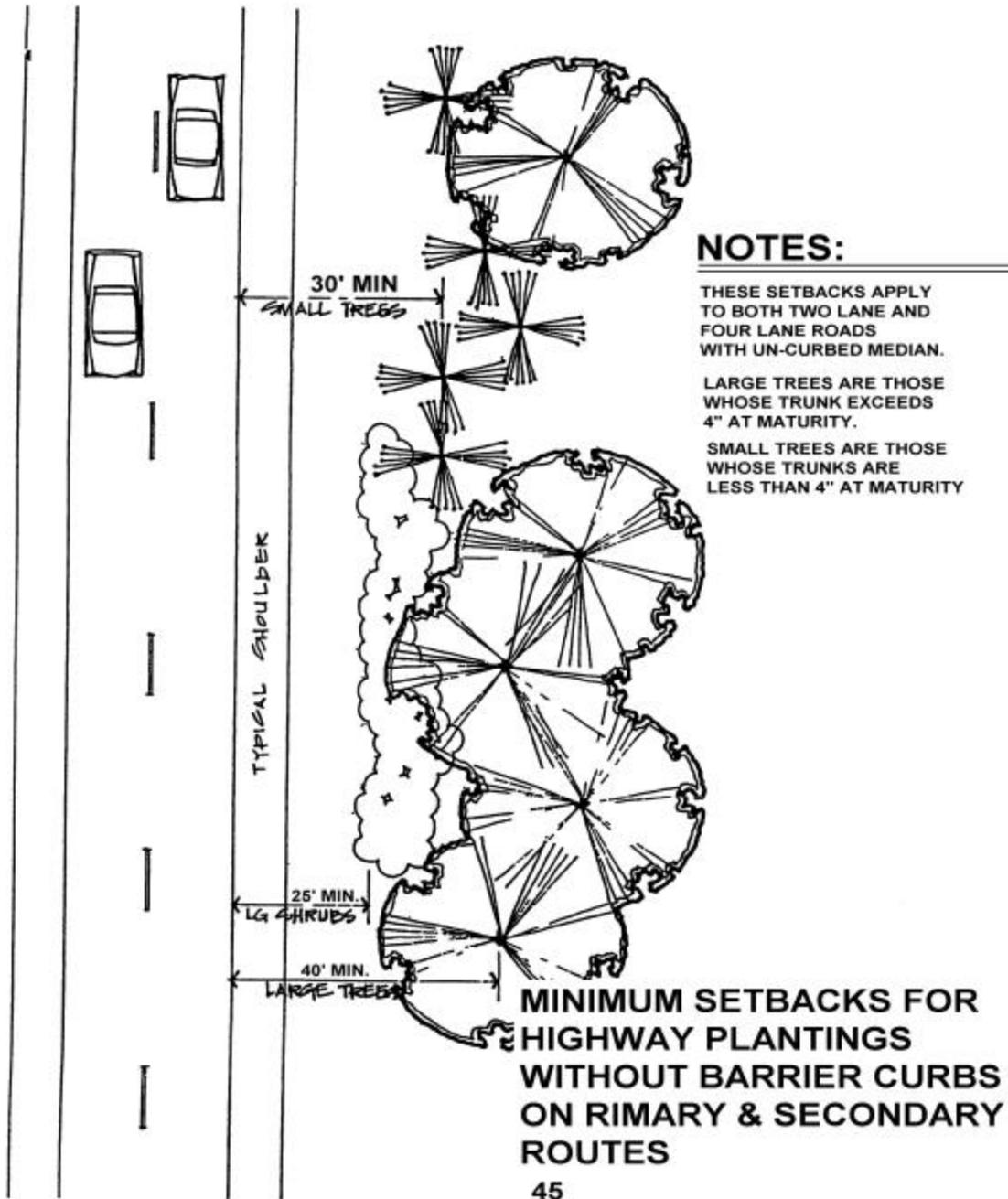
MATURE SPREAD OF TREE CANOPY SHOULD NOT OVERHANG ROADWAY BY MORE THAN 4 FEET AND NOT INTERFERE WITH TRAFFIC.

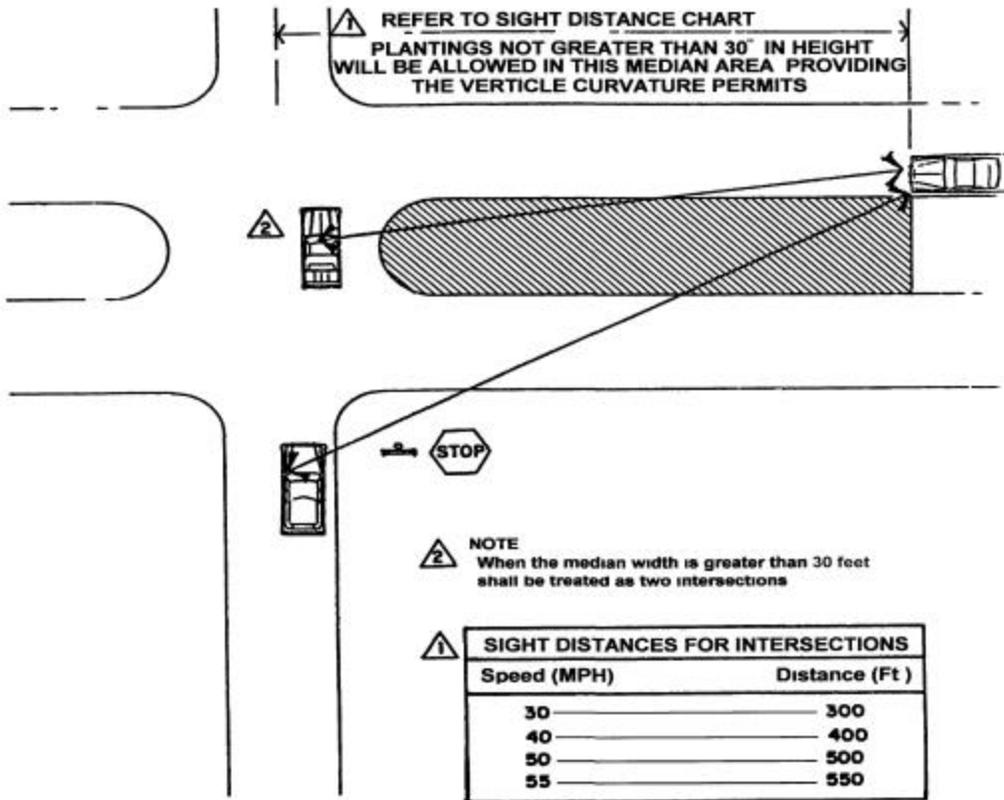
LARGE TREES SHOULD NOT BE PLANTED IN MEDIANS LESS THAN 40' WIDE WITHOUT CURBS. IN MEDIANS OF LESS THAN 40' WIDTH, EXAMPLES OF ACCEPTABLE TREES ARE GRAPE MYRTLE, WAX MYRTLE, CRAB APPLE, LEGGY LIGNSTRUM, ETC. ALONG WITH ALL SHRUBS.

MEDIAN PLANTING FOR BARRIER CURBED ROADWAYS - PRIMARY & SECONDARY ROUTES

△ Revised: 3/22/91

△ Revised: 10/30/98





Source - Transportation Engineers Handbook, 1982
 Edition (Table 19-8)

**SIGHT DISTANCE REQUIREMENTS
 AT TYPICAL INTERSECTION
 DIVIDED HIGHWAY**

3 REVISED 10/30/98

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 26:1670 (August 2000).

§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 and 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 display's 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?

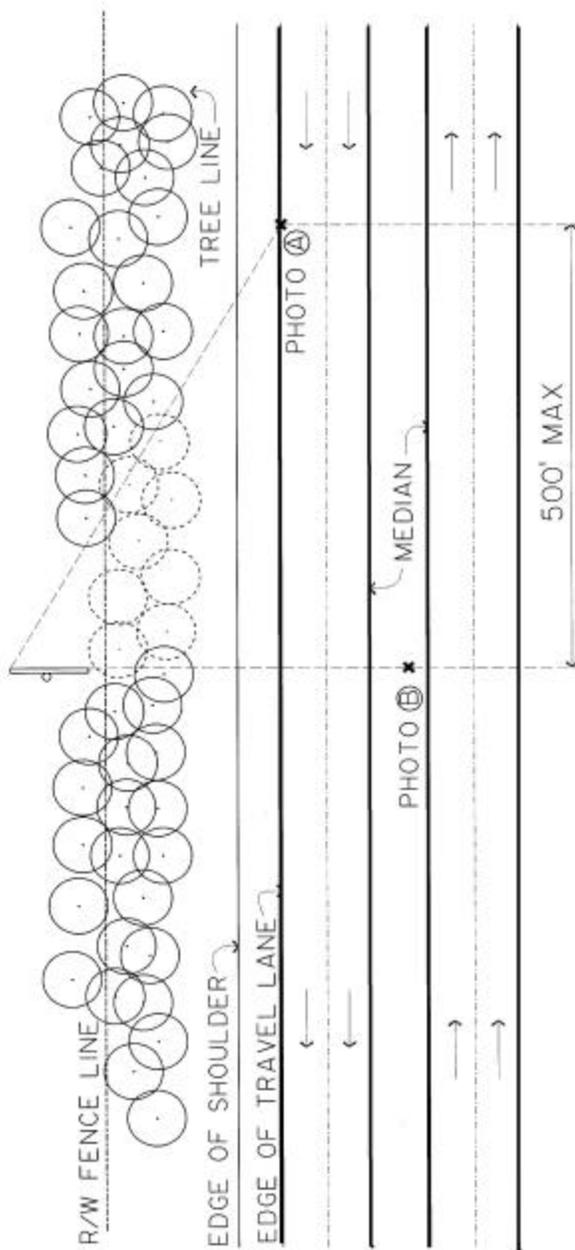
- iii. Is this display illegally placed?
- iv. Is this display nonconforming to state beautification criteria?
 - b. Where replacement of trees is required, a plan (designed by a licensed Landscape Architect, at no cost to the Department) will be submitted to the Department for review, comments and/or 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 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) 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.

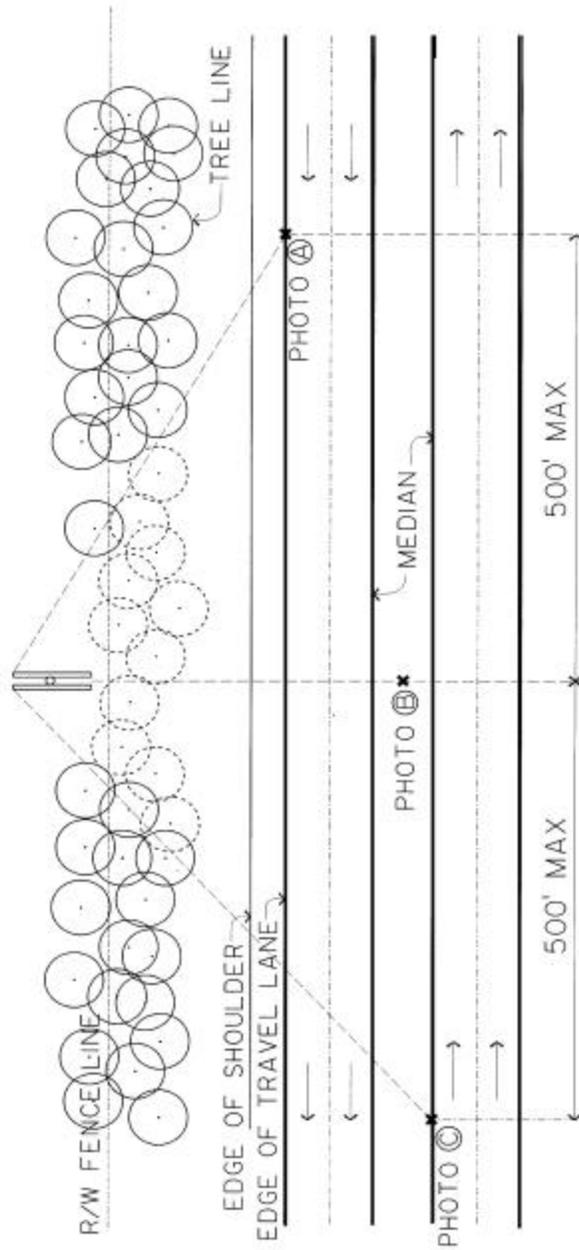
C. Single Face Sign

DIAGRAM I SINGLE FACE SIGN



D. Double Face Sign

DIAGRAM 2
DOUBLE FACE SIGN



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 26:1674 (August 2000).

§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. 3:4271 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 26:1675 (August 2000).

Kam K. Movassaghi, P.E., Ph.D.
Secretary

0008#095

RULE

**Department of Treasury
State Bond Commission**

Electronic Bidding

Bids for general obligation bonds of the state may be received by the state bond commission through sealed bids, electronic bids or facsimile bids as provided herein. Bids received electronically must be submitted via a qualified electronic bid provider, as determined by the State Treasurer, and as set forth in the Notice of Sale for the bonds. Bidders submitting a bid electronically must provide a signed official bid form to the state bond commission not later than 4 p.m. (Baton Rouge time) on the day prior to the opening of bids. In the event that there is a malfunction in the electronic bidding system, bids may be submitted by facsimile as set forth in the Notice of Sale for the bonds, provided that the

facsimile bids are received within the time limits set forth in the Notice of Sale. Delivery of a bid is at the risk of the bidder.

John Neely Kennedy
State Treasurer

0008#015

RULE

**Department of Treasury
State Bond Commission**

Surety Bond Deposit

Bidders for general obligation bonds of the state must furnish a good faith deposit in the amount of two percent of the par value of the bonds (the deposit) offered for sale in the form of a certified check or cashier's check or by surety bond. If a check is used, it must accompany each sealed bid. For an electronic bid or a facsimile bid as authorized by the Electronic Bidding Rule, the check must be provided in advance of the submission of the bid. Such check must be drawn on a bank or trust company authorized to transact business in the state of Louisiana or in the state of New York, payable to or in favor of the State Treasurer of Louisiana on behalf of the state of Louisiana. Any surety bond must be from an insurance company licensed to issue such a bond in the state of Louisiana and such bond must be submitted to the state bond commission prior to the opening of the bids. The surety bond must identify each bidder whose deposit is guaranteed by such surety bond. If the bonds are awarded to a bidder utilizing a surety bond, then the successful bidder is required to submit its deposit to the state bond commission in the form of a certified check or cashier's check drawn on a bank or trust company authorized to transact business in the state of Louisiana or in the state of New York, payable to or in favor of the State Treasurer of Louisiana on behalf of the state of Louisiana (or wire transfer such amount as instructed by the state bond commission) not later than 2 p.m. (Baton Rouge time) on the next business day following the award. If such good faith deposit is not received by that time, the surety bond will be drawn on by the state to satisfy the deposit requirement. No interest on the deposit will accrue to the successful bidder. The deposit will be applied to the purchase price of the bonds. In the event the successful bidder fails to honor its accepted bid, the deposit will be retained by the state. Delivery of the deposit is at the risk of the bidder.

John Neely Kennedy
State Treasurer

0008#014

RULE

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

Billfishes (LAC 76:VII.355)

The Wildlife and Fisheries Commission does hereby 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.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishery

§355. Harvest Regulations C Billfishes

A. - B. ...

| Species | Minimum Size Limit |
|----------------|--|
| 1. Blue Marlin | 99 inches Lower Jaw Fork Length (LJFL) |

B.2. - I. ...

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 26:1676 (August 2000).

James H. Jenkins, Jr.
Secretary

0008#033

RULE

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

Prohibited Fish Species (LAC 76:VII.359)

The Wildlife and Fisheries Commission does hereby 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.

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

A. 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 26:1676 (August 2000).

James H. Jenkins, Jr.
Secretary

0008#032